

Washington, Tuesday, November 24, 1959

# Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER C—OPERATING LOANS
[Administration Letters 544(440), 549(441), 576(441)]

# PART 341—POLICIES AND AUTHORITIES

# Miscellaneous Amendments

Section 341.1(a) in Title 6, Code of Federal Regulations (24 F.R. 8401), has been amended, and §§ 341.4(c), 341.7(a) (15) and (16), 341.7(c), and 341.9(a) (5) have been added in Title 6 to read as follows:

## § 341.1 General.

(a) This subpart prescribes the policies and authorities for making operating loans to full-time operators of family-type farms as authorized under Title II of the Bankhead-Jones Farm Tenant Act, as amended. The terms "full-time operator" and "family-type farm" as used in this subpart are defined in § 341.4. The making of such loans to Indians and permittees and lessees on Indian trust lands is subject to the additional policies and procedures contained in Part 392 of this Chapter.

## § 341.4 Eligibility.

(c) Loans in Hawaii. The provisions of subparagraphs (6) and (7) in paragraph (a) of this section are modified to the extent that loans to full-time family-type farmers in Hawaii for the purpose of establishing such crops as coffee, sugar cane, and pineapple or other similar crop which requires 18 months or more from planting to initial harvest time may be made to otherwise qualified applicants.

(1) After the loan is made, the borrower must be engaged in agriculture as farm owner, tenant, or farm laborer, and must have the time and means of adequately caring for his plantings.

This issue includes two parts bound together. Part II contains the proposed revision of regulations relative to milk in the Upper Chesapeake Bay, Maryland, Marketing Area, 7 CFR Part 1027, issued by the Department of Agriculture, Agricultural Marketing Service.

(2) The applicant must agree that after the farm comes into full production, the major portion of his income will be derived from farming operations and that he will spend the major portion of his time in carrying on his farming operations.

# § 341.7 Loan purposes.

(a) Subject to the loan limitations and special requirements set forth in § 341.8, operating loans may be made for:

(15) In Hawaii, the following purposes also:

(i) Necessary coffee-drying equipment and trellises for passion fruit may be purchased with operating loan funds under provisions of this paragraph provided such equipment does not become a part of the real estate and thereby prevent the Farmers Home Administration from obtaining an enforceable chattel lien on such equipment. Consideration should be given to the acquisition of such equipment through the use of group services where possible.

services where possible.

(ii) Subject to the limitations prescribed in subparagraphs (1), (2), and (3) in this paragraph, loans may be made for erecting necessary farm buildings and making essential repairs and improvements to existing farm buildings provided the buildings, repairs, or improvements for which the loan is made are normally considered a part of the cost of operating the farm and will enable the applicant to establish or reorganize an approved farming enterprise and not more than \$2,000 may be ad-

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vanced to a borrower for any or all such purposes during any fiscal year.

(iii) Subject to the limitations prescribed in subparagraphs (1), (2), and (3) in this paragraph, loans may be made for the establishment and improvement of pastures, hay crops, coffee, pineapple, banana, and similar perennial-type crops; for the construction of terraces, waterways, and farm ponds; the clearing, leveling, and drainage of land; and the payment for other approved soil and water conservation and improvement measures provided not more than \$2,000 may be advanced to a borrower for any or all of such purposes during any fiscal year.

(iv) When loans are made to tenants for real estate improvements authorized in subparagraphs (12), (13), and (14) in this paragraph and in this subparagraph, the lease must provide for an assignment of the lease to the Government or to someone designated by the Government, and loans may not be made to tenants operating on Hawaiian Homes Commission lands unless its present regulations and policies are changed in a manner which would permit the Farmers Home Administration to obtain a valid crop mortgage.

(16) Financing feeder cattle enterprises to enable the borrower to provide a profitable means of using feed produced on the farm or ranch. Only feeder enterprises in which the borrower produces practically all the required hay and other roughage and a substantial part of the grain needed will be considered favorably for financing with operating loans. Only sound feeder operations which do not involve excessive risks to either the borrower or to the Government will be refinanced.

(i) Loans will not be made to finance commercial feed lot operations or for other feeding operations where the applicant will require a substantial amount of credit for either the purchase of feed or for grazing fees.

or for grazing fees.

(ii) Initial loans will not be made to applicants whose only need for Farmers Home Administration credit assistance is to provide operating expenses in connection with a feeder expenses in connection.

tion with a feeder enterprise.

(iii) Ordinarily loans will be made only to finance feeder enterprises where light weight feeders such as feeder calves or yearlings are involved, and not to finance feeding operations involving heavy cattle, feeders which will be fed

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for only a short period, or feeders to be finished to prime grade.

(c) The making of operating loans involving poultry production is subject to the general policies contained in § 331.6 (c) of this chapter.

§ 341.9 Rates and terms.

(a) \* \* \*

(5) For loans made to full-time family-type farmers in Hawaii to establish such crops as pineapple, coffee, and sugar cane which usually require more than 18 months from planting to harvest dates, the initial payment will be scheduled on a date coinciding with the date the income is to be received but not more than 24 months from the date of the loan check.

(Secs. 21, 41, 44, 50 Stat. 524, as amended, 528, as amended, 530, as amended; 7 U.S.C. 1007, 1015, 1018. Order of Acting Sec. of Agric., 19 F.R. 74, 22 F.R. 8188)

Dated: November 17, 1959.

K. H. HANSEN. Administrator. Farmers Home Administration.

[F.R. Doc. 59-9911; Filed, Nov. 23, 1959; 8:47 a.m.]

# Title 9—ANIMALS AND **ANIMAL PRODUCTS**

Chapter I-Agricultural Research Service, Department of Agriculture

> SUBCHAPTER A-MEAT INSPECTION REGULATIONS

# PART 18-REINSPECTION AND PREPARATION OF PRODUCTS

Use in Preparation of Meat Food Products of Chemicals, Antioxidants, Coloring Matter, Flavoring, Water, Ice, Cereal, Vegetable Starch, Nonfat Dry Milk, Etc.

Pursuant to the authority conferred by the Meat Inspection Act, as amended and extended (21 U.S.C. 71-96) and section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), § 18.7 of the Meat Inspection Regulations (9 CFR 18.7) is hereby amended by changing paragraph (a) (2) to read as follows:

(2) Coal tar dyes upon certification by the manufacturer, and the furnishing of authoritative evidence to the inspector in charge, that the dyes are certified under the Federal Food, Drug, and Cosmetic Act for use in connection with foods.

The foregoing amendment to the Meat Inspection Regulations deletes a listing of coal tar dyes acceptable for use in certain products under the regulations so as to make it unnecessary to amend the regulations each time the list of coal 'tar dyes eligible for certification under the Federal Food, Drug, and Cosmetic Act for use in connection with foods is changed by the removal or addition of a dye. It relieves restrictions by per-

mitting the use of one coal tar dye which has been listed under the Federal Food. Drug, and Cosmetic Act but is not now listed in said regulations. In order to be of maximum benefit to affected processors, the amendment should be made effective as soon as possible. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure thereon are impracticable and unnecessary, and since the amendment relieves restrictions and otherwise is merely procedural in nature, it may be made effective less than 30 days after publication in the FEDERAL

The amendment shall become effective on November 24th, 1959.

Done at Washington, D.C., this 19th day of November 1959.

> M. R. CLARKSON. Acting Administrator, Agricultural Research Service,

[F.R. Doc. 59-9939; Filed, Nov. 23, 1959; 8:50 a.m.1

# Title 12—BANKS AND BANKING

Chapter V-Federal Home Loan Bank Board

SUBCHAPTER C-FEDERAL SAVINGS AND LOAN SYSTEM

INo. 12.9161

## PART 555—BOARD RULINGS

NOVEMBER 18, 1959.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of publication of statements of general policy and interpretations relating to Federal savings and loan associations adopted or formulated by the Board for the guidance of the public, and for the purpose of effecting such publication, hereby amends the rules and regulations for the Federal Savings and Loan System (12 CFR Ch. V, Subchapter C) by adding at the end of said Subchapter C a new Part 555, effective November 24, 1959, to read as follows:

Sec. 555.1

Directors.

Escrow business; power to engage in. 555.2

555.3 Real estate.

Real estate loans. 555.4

Insurance. 555.5

Unsecured loans: refinancing of: 555.6

authority for.

Share loans; security for; shares 555.7 purchased with proceeds of the loan.

555.8 Savings accounts. 555.9

Members; borrowing; loan participation; effect on.

Certificates of deposit; investment in; power to make; liquidity requirement; eligibility under

§ 545.8-2.

AUTHORITY: §§ 555.1 to 555.10 issued under authority sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.; secs. 3, 12, 60 Stat. 238, 244, 5 U.S.C. 1002, 1011.

#### § 555.1 Directors.

(a) Quorum of; number necessary for. Where the number of directors provided for in the bylaws or as fixed thereunder by resolution of the members have been elected, it is necessary to have a majority of the authorized number in order to constitute a quorum. This would be true even though the number of directors actually serving had been reduced by reason of death, resignation or removal from office. On the other hand, if, between annual meetings, the authorized number is increased without the election of new directors to fill the new vacancies, a quorum would be a majority of the number of directors as it existed prior to the increase. Newly created directorships which have not been filled are not counted in determining the number necessary to constitute a quorum.

(b) Vacancies; power of directors to fill. The board of directors of a Federal association having a Charter N or Charter K (rev.) and the prescribed bylaws, without calling a special meeting of the members for the purpose of electing directors to fill vacancies, may validly elect directors to fill vacancies, including vacancies created by (1) resignation, (2) increase in the number of the directors by the board of directors as provided by the bylaws, and (3) increase in the number of directors voted by the members, as provided by the bylaws, if the members failed to elect directors to the new positions created by them. Each director so elected by the board of directors shall serve until the next annual meeting of the members.

#### § 555.2 Escrow business; power to engage in.

A Federal association has no power, express or implied, to conduct the business of acting as escrow agent with respect to funds unrelated to loans made by the association. In the handling of escrows related to its loans, a Federal association may not assume duties or responsibilities or perform acts which are in conflict with the limitations on its power imposed by the Home Owners' Loan Act of 1933, as amended, and regulations thereunder or its charter.

## § 555.3 Real estate.

(a) Fraternity houses; classification of. For lending purposes, fraternity houses should be classified under § 545. 6-1(b)(iv) of this subchapter as "other improved real estate" designed or used primarily for residential purposes. Although fraternity houses are the residences of students, they are not homes or combination homes and business properties within the contemplation of the regulations.

(b) Motels; classification of. For lending purposes, motels, which in reality are roadside hotels, should be classified as "other improved real estate" as defined in § 541.12 of this subchapter. The regulations must be interpreted within the spirit and intent of the governing statutes. Section 5 of the Home Owners' Loan Act authorizes the incorporation of Federal associations for two primary purposes i.e., "to provide local mutual

thrift institutions in which people may invest their funds" and "to provide for the financing of homes". Recognizing that such associations would find it desirable and perhaps necessary to make other than home loans the statute authorizes within 20 percent of the assets of an association loans on "other improved real estate". The statute does not contemplate that Federal associations be authorized to finance commercial enterprises which incidentally contain residential quarters, except within the 20 percent of assets limitation. In the light of these statutory provisions, it can not be said that motels which are commercial undertakings are embraced in the definition of "combination home and business property" any more than would a hotel consisting of hundreds of rooms and one or two apartments for use by the owner or manager or other personnel. On the other hand, if the business use (tourist units) is merely incidental to the residential use of the security property, it would qualify as combination home and business property.

(c) Completed; definition of. For the purposes of § 545.6-1(a) (4) of this subchapter, pertaining to loans in excess of 80 percent of the value of the security, a residential structure is deemed to be completed when, in conformity with general practice in the community, it is ready for occupancy. For instance, the house on which the mortgage is being taken has been completed except for the second coat of exterior painting which can not be completed for reasons of weather, or the street has not been completed, but sufficient funds to pay for such work are to be held in escrow until it is done; the structure would be considered "completed" for the purposes of the regulation if it would be considered, by reason of local practice and custom. to be ready for occupancy.

(d) Paving liens against; power to purchase. A Federal association may purchase a paving certificate which constitutes a lien on property securing an association loan, if that is necessary to protect its interest in the property. However, a Federal association may not acquire such certificates as to property on which it does not have a mortgage or for the purpose of making an investment.

# § 555.4 Real estate loans.

(a) Security for; assignment of notes and mortgages as. "Collateral" loans secured by assignment of first lien notes and mortgages held by the borrower are not loans made on the security of first liens on real estate as contemplated by the statute and therefore may not be made by Federal associations. Section 5(c) of the Home Owners' Loan Act, as amended, provides that Federal associations "shall lend their funds only on the security \* \* \* of first liens upon homes or combination homes and businesso property \* \* \*". This provision of the statute has been construed and defined in § 541.9 of this subchapter as follows: "The term 'loans on the security of first liens' means loans on the security of any instrument \* \* \* which makes the interest in the real estate described therein \* \* \* specific security for the

payment of the obligation secured by such instrument, provided the instrument is of such a nature that, in the event of default, the real estate described in such instrument could be subjected to the satisfaction of such obligation with the same priority as a first mortgage or a first deed of trust in the jurisdiction where the real estate is located." While a first mortgage in itself evidences a first lien on realty it is, before foreclosure is completed, personal property in the hands of the mortgagee. A mortgage and accompanying note may be assigned as collateral security for a debt, but the mortgagee remains the owner of the mortgage. The assignee's interest is contingent. An assignment of a note and mortgage as collateral security for a loan by a Federal association would not permit the association, in the event of the borrower's default without default by the mortgagor, to subject the real estate described in the assigned mortgage to the satisfaction of the obligation owed the association. Such a loan would not be a loan on the security of a first lien on real estate as defined in the regulations, but would be a loan on the security of assigned personal property. This same reasoning and conclusion would apply to the assignment of a note and real estate contract as collateral security for a loan by a Federal association.

(b) Security for; shares pledged for excess over 90 percent loaned under §545.6-1(a) (4) of this subchapter. loan may not be made under § 545.6-1 (a) (4) of this subchapter for an amount in excess of the maximum therein provided, with such excess secured by the pledge of a savings account as collateral. The maximum amount of the principal obligation of a loan made pursuant to that section is limited to 90 percent of the value of the property or 90 percent of the purchase price, whichever is lower, and in no event in excess of \$18,000. In other words, the amount of the principal obligation of a loan under this section is determined only by a formula which is strictly related to either the purchase price or the value of the property, with a ceiling of \$18,000.

(c) Servicing of; agent for; right of Federal association to act as. The servicing of loans by a Federal association under § 545.11 of this subchapter can be undertaken only to such extent as would be reasonably incidental to the accomplishment of its express objects. For example, an association may agree to service loans which it sells. However, there is no general corporate power in Federal associations to act as service agent for the public in connection with the handling of mortgage loans of other parties, and for an association to undertake to do so would be in excess of its corporate powers.

# § 555.5 Insurance.

(a) Hazard; control over placing of. The board of directors of each Federal savings and loan association has not only the right but the duty to establish and maintain such requirements over hazard insurance as in the fair and considered judgment of such directors are necessary to protect the association's interest in

the real estate security for its loans. Subject to this limitation, those who borrow from Federal associations on real estate security should have reasonable freedom of choice in the placing of hazard insurance on their property.

(b) Life; premiums on; advances for. The fourth sentence of § 545.6-11 of this subchapter authorizes an association to make unsecured advances for the payment of life insurance premiums in connection with real estate loans. On the other hand, applicable law and regulation do not contemplate, and are not considered to permit, the indiscriminate making of unsecured loans to finance life insurance premiums. Any lending program which in general practice contemplates or gives promise of unsecured advances to pay insurance premiums is deemed to be without regulatory sanction.

# § 555.6 Unsecured loans; refinancing of; authority for.

A Federal association may not make an uninsured, unsecured loan to refinance a loan previously made by another association for property alteration, repair or improvement, for the reason that its investment would not be an investment in the original loan which was for property alteration, repair or improvement, but on the contrary would be an investment in its own loan, which would be for the refinancing of the other institution's loan. The transaction would not be within the authority conferred by subsection (c) of section 5 of the Home Owners' Loan Act of 1933, as amended, to invest "in other loans for property alteration, repair or improvement". A Federal association may, however, make an uninsured, unsecured loan to refinance or recast for a borrower the unpaid balance of an uninsured, unsecured loan to such borrower made and still held by the association, provided the loan as originally made complied in all respects with § 545.8 of this subchapter, and provided the refinanced or recast loan is evidenced by a note or notes the amount and terms of which are such as could have been made by the association as an original loan pursuant to said section. However, the loan as recast could exceed \$3,500 if such excess is solely by reason of inclusion of loan charges permissible under § 545.6-10 of this subchapter, inclusion of accrued interest (whether due or not), or carrying over of original gross charges into the new evidence or evidences of debt or of new items of gross charges.

### § 555.7 Share loans; security for; shares purchased with proceeds of the loan.

A savings account in a sufficient amount must be in existence before a share loan may be made. The provision of section 5(a) of the Home Owners' Loan Act of 1933, as amended, that "such associations shall lend their funds only on the security of their shares or on the security of first liens \* \* \*" is not construed to mean that the share collateral put up as security for the loan may be acquired by the borrower out of the proceeds of the same loan. In the context in which the words appear in the statute

the reasonable interpretation is that the collateral for the loan be in existence and proferred as security before the loan is granted. Section 545.7 of this subchapter is, in effect, interpretative of that provision of the statute. By this regulation it is required that loans be made only to the extent that the shares offered for collateral have been fully paid.

### § 555.8 Savings accounts.

(a) Payments on; receipt of, defined in relation to a fixed determination date. In the case of a Federal association that has fixed a determination date as provided in the charter, payments on savings accounts must actually be received by the association by such date in order to be considered as having been invested on the first day of the month.

(b) Redemption of; must be non-discriminatory. Section 11 of Charter K, and section 7 of Charter N and Charter K (rev.) do not confer upon the association the power to discriminate against an individual shareholder by arbitrarily closing or redeeming his share account. To give meaning to the provision it is necessary first to interpret the word "otherwise" as it is used in that section. The doctrine of ejusdem generis is generally applied in such situations. It means that where terms evidently confined to a particular class of things are subjoined by a term of very extensive signification, the latter term, however general and comprehensive in its possible import, when thus used embraces only things ejusdem generis; that is of the same class of things comprehended by the preceding limited and confined terms. The doctrine of ejusdem generis is a mere specific application of the broader maxim "noscitur a sociis" which means that general and specific words which are capable of an analagous meaning being associated together take color from each other, so that the general words are restricted to a sense analagous to the less general. Applying the rule of noscitur a sociis to the section, it does not make the word "otherwise" an unlimited choice. When the section directs that redemption shall be by lot or otherwise as the board of directors may de-termine, "otherwise" is limited by the words "by lot" so that the method chosen must be one which will affect the shareholders or the shareholders of a certain class in a nondiscriminating way. If this were not true there would have been no necessity whatsoever for the provision that redemption shall be by lot. Only by such an interpretation can full meaning be given to the entire sentence.

(c) Dividends on; distribution of, prior to close of dividend period. The Board does not object to the making of dividends available by cash or credit to a member's account on the last day of the dividend period on which the association is open for business; nor does the Board object to the payment of earnings for the dividend period on savings withdrawn on the last business day of the period.

(d) Checking accounts; advertising and use as. A Federal association may not advertise that its savings accounts may be used as checking accounts nor

may the withdrawal of savings be made a device by which members may at will draw personal checks against their accounts. Section 563.27 of Subchapter D of this chapter, does not permit such a representation and the powers of Federal associations do not extend to such a practice.

(e) Service charge on; prohibition of. A Federal association may not arbitrarily cancel out dormant savings accounts, no matter how small, and transfer the amounts to income. This would be tantamount to a service charge in violation of § 545.1 of this subchapter which prohibits the making of any service charge for either active or dormant savings accounts.

(f) Solicitation of; sale of merchandise in connection with. Section 563.24 of Subchapter D of this chapter, authorizes Federal associations (as well as other insured institutions) to give away merchandise, within the limits expressly stated in the regulation, in connection with the opening or increasing of savings accounts. However, the sale of merchandise is not reasonably incident to the accomplishment or performance of any of the express powers set out in the charter for Federal associations; therefore, such associations are without authority to sell merchandise, coin banks and similar coin-saving devices excepted.

#### § 555.9 Members; borrowing; loan participation, effect on.

A mortgagor executing a note and mortgage in the name of two or more Federal associations which join in making the loan would be deemed a borrowing member of each of such associations. The mortgagor would, in the case of purchase of a participation interest by another Federal association, likewise be deemed a member of such purchasing association. An obligor on a mortgage note purchased by a Federal association becomes a member of the purchasing Federal and the association would be estopped from denying the obligor his rights of membership. This conclusion is based on the premise that when a Federal association purchases a mortgage loan from a third party, it is lending its funds to a mortgagor, and consequently, it is making a loan and, under the circumstances, its act constitutes an acceptance of the mortgagor as a member of the association. Purchasing of a participating interest differs from purchasing a whole loan only in a degree and not in substance, insofar as the question of membership in the participating institution is concerned.

#### § 555.10 Certificates of deposit; investment in; power to make; liquidity requirement; eligibility under § 545.8-2.

A Federal savings and loan association may make deposits evidenced by certificates of deposit and may otherwise acquire such certificates. For the purposes of compliance with the provisions of § 545.8–2 of this subchapter, cash on hand, deposits made by an association in a Federal Home Loan Bank and in other banks shall be considered as cash; but no deposit evidenced by a certificate of deposit shall be considered as cash

for such purposes unless the association itself made the deposit for which the certificate was issued.

Resolved further that since the aforesaid amendment contains only statements of general policy or interpretations of substantive rules adopted or formulated by the Board for the guidance of the public, the requirements of notice and public procedures set out in \$508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and section 4(a) of the Administrative Procedure Act do not apply, and for the same reasons, deferment of the effective date is not required under section 4(c) of the Administrative Procedure Act.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN, Secretary.

[F.R. Doc. 59-9913; Filed, Nov. 23, 1959; 8:47 a.m.]

[No. FSLIC-750]

SUBCHAPTER D-FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

## PART 570—BOARD RULINGS

NOVEMBER 18, 1959.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of publication of statements of general policy or interpretations relating to insured institutions adopted or formulated by the Board for the guidance of the public, and the for the purpose of effecting such publication, hereby amends the rules and regulations for the Insurance of Accounts (12 CFR Ch. V, Subchapter D) by adding at the end of said Subchapter D a new Part 570, effective November 24, 1959, to read as follows:

570.1 Liquidity requirement; certificates of deposit; eligibility under bank system regulations.

570.2 Pension, retirement and deferred compensation plans and contracts; principles governing.

570.3 Reserves.

AUTHORITY: §§ 570.1 to 570.3 issued under authority secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726; Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp; secs. 3, 12, 60 Stat. 238, 244, 5 U.S.C. 1002, 1011.

## § 570.1 Liquidity requirement; certificates of deposit; eligibility under bank system regulaton.

Section 523.12 of Subchapter B of this chapter (Regulations for the Federal Home Loan Bank System) prohibits the making of any loan, other than a share loan, by an association that is a member of a Federal home loan bank at any time when its holdings of cash and unpledged obligations of the United States are not at least equal to 6 percent of the association's withdrawable accounts. For the purposes of compliance with said § 523.12 of this chapter, cash on hand, deposits made in a Federal Home Loan Bank by a

member thereof, and deposits made by such member in other banks shall be considered as cash; but no deposit evidenced by a certificate of deposit shall be considered as cash for such purposes unless such member itself made the deposit for which the certificate was issued.

§ 570.2 Pension, retirement, and deferred compensation plans and contracts; principles governing.

In addition to compliance with applicable State laws in the case of State chartered associations, and with legal requirements which must be considered in light of the particular plan or contract, there are general principles to which each pension, retirement, and deferred compensation plan must conform to be regarded as unobjectionable from the standpoint of supervisory interests and responsibilities. These may be stated briefly as follows:

(a) Reasonableness of cost. The expense or obligation of the association should be reasonable as related to the consideration received by the association, to the compensation and term of employment of the officer or employee, and to the means of the institution.

(b) Employment contract. There

(b) Employment contract. There should be no provision which, either by prohibition or by imposing economic sanction, places any obstruction in the way of free exercise by the board of directors of the duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of any officer or employee of the institution.

(c) Amount and funding of obligation. The total obligation or liability of the association as to each participant should either be stated in or be determinable from the plan or contract; and the association's liability in respect to each participant should be fully funded either at the outset or as it accrues so as to assure that there will be no unrecognized or unexpressed liability and that none of the cost will remain to be charged or absorbed after the fiscal period in which the normal employment of the participant terminates. In some instances, the amount of the liability is determinable only actuarily (such as provision for pension payments in event of disability, or for life rather than for a certain number of years); this is un-objectionable provided such liability is fully funded by insurance with an insurance company. Such funding may be accomplished in a variety of ways: In full at the outset if that is practicable; by the purchase of insurance covering all of the obligations, with the premium paid in full at the outset or payable periodically as a current operating expense over the remainder of the participant's normal employment; by pro-rata payment into a fund and charge to expense in each fiscal period during the remainder of the participant's normal employment.

(d) Termination. The plan or tontract should permit the board of directors and their successors at any time to terminate the plan-and any obligations thereunder, beyond those theretofore

fully funded, and to discontinue the making of any payments after such termination. Failure to preserve such freedom could well operate to deprive those responsible in the future for the association's operation of the freedom necessary to adjust its affairs and obligations to changed conditions and means, and thus make the interests of officers and employees paramount to the interests of the members.

(e) Default of the institution. The plan or contract should provide that all obligations of the association thereunder which have not theretofore been fully funded shall terminate automatically in event of default as defined in Title IV of the National Housing Act.

#### § 570.3 Reserves.

(a) Federal insurance; required credits to, source of, after twentieth anniversary. Paragraph (c) of § 563.13 of this subchapter requires that, the credits which are required by that paragraph to be made, after the fiscal year in which occurs the twentieth anniversary of insurance, to the Federal insurance reserve or other reserve accounts irrevocably established for the sole purpose of absorbing losses shall be made from net income, or from surplus or undivided profits not earmarked as set forth in the section. Such required credits may be made by a state-chartered insured institution from a "Bad Debt Reserve" (not constituting part of the institution's Federal insurance reserve) if, and to the extent that, such "Bad Debt Reserve" may be considered as surplus or undivided profits, is not required under state law to be maintained for the sole purpose of absorbing losses, and has not been irrevocably established for the sole purpose of absorbing losses. If, and to the extent that, such "Bad Debt Reserve" could be eliminated and amounts therein transferred to the surplus or undivided profits account, it could be considered as surplus or undivided profits within the purview of the regulation. It could not be so considered if it merely represented, for example, unrealized profits, or if it was merely a valuation account.

(b) Loss; transfers from, to undivided profits. Section 563.11 of this subchapter requires that the Federal insurance reserve be used solely for the purpose of absorbing losses, permits only accounts so limited in use to be designated as the Federal insurance reserve, and provides that the general reserves of Federal associations are deemed to meet such requirement. No deduction may be made from, and no charge may be made against, such reserves for any purpose other than to absorb losses. No reduction of the Federal insurance reserve, through transfers therefrom to undivided profits or surplus, is permissible.

Resolved further that since the aforesaid amendment contains only statements of general policy or interpretations of substantive rules, adopted or formulated by the Board for the guidance of the public, the requirements of notice and public procedures set out in

§ 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) and section 4(a) of the Administrative Procedure Act do not apply, and for the same reasons, deferment of the effective date is not required under section 4(c) of the Administrative Procedure Act.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN, Secretary.

[F.R. Doc. 59-9914; Filed, Nov. 23, 1959; 8:48 a.m.]

# Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency
[Reg. Docket No. 184; Amat, 43–12]

# PART 43—GENERAL OPERATION RULES

# Clarification of Aircraft Limitations for Student Pilots

Section 43.55 of Part 43 of the Civil Air Regulations-provides that a student shall not pilot an aircraft other than that of the category, class, and type which has been endorsed on his student pilot certificate by a flight instructor. As used in this regulation, the word "type" was intended to mean the make and model of the aircraft which a flight instructor had found the student competent to operate in solo flight. It was not intended that such an endorsement would authorize the student pilot to operate any other make and model of aircraft in solo flight, regardless of its similarity to the aircraft covered by the endorsement.

It is also true that similarity in design of some aircraft, especially those of the same manufacturer, could present substantial difficulty in determining whether two particular aircraft are, or are not, of the same type. The lack of clarification of this point has resulted in some student/pilots operating, or attempting to operate, aircraft which they were not competent to fly.

Civil Air Regulations Draft Release No. 59-8 proposed substitution of the words "make and model" in lieu of the word "type". The words "category" and "class" have also been deleted as they are superfluous when the words "make and model" are used.

This amendment should increase safety by eliminating the possibility of misinterpretation of the intent of the regulation.

Interested persons have been afforded an opportunity to participate in the making of this amendment (24 F.R. 5613), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, § 43.55 of Part 43 of the Civil Air Regulations (14 CFR Part 43, as amended) is hereby amended to read as follows, effective December 29, 1959:

# § 43.55 Aircraft limitations.

A student pilot shall not pilot an aircraft other than that of the make and model which has been endorsed on his student pilot certificate by a flight instructor.

(Secs. 313(a), 601 and 602(a); 72 Stat. 752, 775, 776; 49 U.S.C. 1354, 1421, 1422)

Issued in Washington, D.C., on November 18, 1959.

ALAN L. DEAN. Acting Administrator.

[F.R. Doc. 59-9896; Filed, Nov. 23, 1959; 8:45 a.m.]

# Chapter III—Federal Aviation Agency

SUBCHAPTER C-AIRCRAFT REGULATIONS

[Reg. Docket No. 127; Amdt. 55]

## PART 507—AIRWORTHINESS DIRECTIVES

## Fairchild F-27 Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring installation of modified cartridge units in the fire extinguisher system of certain Fairchild F-27 aircraft was published in 24 F.R. 7649.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing \$507.10(a) is amended by adding the following new airworthiness directive.

59-23-3 FARCHILD. Applies to F-27 Series aircraft Serial Numbers 1 to 63 inclusive. Compliance required not later than December 1, 1959.

(a) The present cartridge unit in the fire extinguisher system has been found to be unreliable above 20,000 feet. Modified car-tridge units must therefore be installed to

insure reliability above 20,000 feet.

(b) Remove four Fenwal fire extinguisher cartridge units, P/N 690202-2, attached to main and reserve fire extinguisher bottles located in left and right nacelles, and replace with new Fenwal fire extinguisher cartridge units, P/N 690202-3.

(Fairchild F-27 Service Bulletin No. 26-1 covers this same subject.)

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on November 18, 1959.

> ALAN L. DEAN, Acting Administrator.

[F.R. Doc. 59-9900; Filed, Nov. 23, 1959; 8:46 a.m.]

[Reg. Docket No. 127; Amdt. 56]

# PART 507—AIRWORTHINESS **DIRECTIVES**

## Vickers Viscount Model 810 Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requir-

ing modifications to the propeller warning light on Vickers Viscount 810 aircraft was published in 24 F.R. 7649.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing § 507.10(a) is amended by adding the following new airworthiness directive.

59-24-1 VICKERS. Applies to all Viscount Model 810 aircraft.

Compliance required by December 31, 1959. In order to preclude the possibility of excessive glare affecting the pilots, the following modifications are required.

(a) The propeller below low stop warning lamps which are located on the fire control panel should be covered by filtered lamp cowls Vickers P/N 81536.287.

(b) Replace the existing lamp cowl Vickers P/N 74536-745, which is installed at the propeller low stop removed warning lights, with an improved lamp cowl Vickers P/N 75436-265.

The British Air Registration Board considers this mandatory.
(Vickers-Armstrongs Modification Bulletins Nos. FG-1559 and G-1668 cover this

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on November 17, 1959.

ALAN L. DEAN. Acting Administrator.

[F.R. Doc. 59-9901; Filed, Nov. 23, 1959; 8:46 a.m.]

[Reg. Docket No. 127; Amdt. 57]

# PART 507—AIRWORTHINESS DIRECTIVES

# Piaggio P.136-L1 and P.136-L2 Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring installation of a water rudder cable guard on Piaggio P.136-L1 and P.136-L2 aircraft was published in 24 F.R. 7649.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing \$507.10(a) is amended by adding the following new airworthiness directive.

59-23-1 Plaggio. Applies to all Model P.136-L1 and P.136-L2 aircraft.

Compliance required by December 31, 1959. In order to preclude the water rudder cables from fouling the bolt end and nuts that secure the microswitch to the water rudder retraction cylinder, a cable guard plate must be installed. The Registro Aeronautico Italiano considers compliance man-

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on November 18, 1959.

ALAN L. DEAN, Acting Administrator.

[F.R. Doc. 59-9902; Filed, Nov. 23, 1959; 8:46 a.m.1

#### SUBCHAPTER E-AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-WA-34]

[Amdt. 105]

# PART 600—DESIGNATION OF FEDERAL AIRWAYS

[Amdt. 125]

PART 601-DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEG-MENTS

[Amdt. 47]

# PART 608-RESTRICTED AREAS

# Modification of Restricted Area and Federal Airways and Designation of Control Area Extension

On September 25, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 7735) stating that the Federal Aviation Agency was considering an amendment to Part 601 and § 608.28 of the regulations of the Administrator which would designate an Aberdeen, Md., control area extension and modify the Aberdeen, Md., Restricted Area (R-54) (Washington Chart).

As stated in the notice, the Aberdeen, Md., Restricted Area (R-54) is presently designated for conducting strafing, bombing, drone aircraft operations, rocket, artillery and anti-aircraft firing from the surface to unlimited altitudes on a continuous basis. The controlling agency for Restricted Area (R-54) is the United States Second Army, Aberdeen Proving Grounds, Md. The results of a recent survey of airspace use in Restricted Area (R-54), conducted during the period from July 1, 1957, to July 1, 1958, for the Federal Aviation Agency by Cornell Aeronautical Laboratory, Inc., show that no firing entered the portion of R-54 south of a line between two points described by coordinates as follows: latitude 39°12′10″ N., longitude 76°16′30″ W.; latitude 39°12′45″ N., longitude 76°22′30″ W. On the basis of this survey, the retention of the portion of R-54 south of the above described line is unjustified as an assignment of airspace and the revocation thereof is in the public interest.

In accordance with the policy of the Federal Aviation Agency to ensure the efficient utilization of airspace, the Federal Aviation Agency is designating as control area the airspace within R-54 for air traffic management purposes in the routing of air traffic during such times as R-54 is not in use for its primary purpose. Additionally, that airspace adjacent to R-54, and bounded by Wilmington, Del., control area extension, and VOR Federal airways Nos. 16, 44 and 123 is being designated as control area. Moreover, the controlling agency for R-54 is being changed from the Second Army to the Federal Aviation Agency.

Although not mentioned in the notice, it is necessary to amend § 600.6044 which describes VOR Federal airway No. 44, in order to delete the reference to R-54,

as Victor 44 will no longer overlie the restricted area.

No adverse comment was received regarding these proposed amendments.

Interested persons have been afforded an opportunity to participate in the rules herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, § 600.6044 (24 F.R. 1282, 2645, 3870), Part 601 (14 CFR, 1958 Supp., Part 601) and § 608.28 (23 F.R. 8581) are amended as follows:

# § 600.6044 [Amendment]

1. In the text of § 600.6044 VOR Federal airway No. 44 (Centralia, Ill., to Baltimore, Md.), delete "The portion of this airway which lies within the geographical limits of, and between the designated altitudes of, the Aberdeen Restricted Area (R-54) shall be used only after obtaining prior approval from the Federal Aviation Agency Air Traffic Control."

# 2. Section 601.1121 is added to read: § 601.1121 Control area extension (Aberdeen, Md.).

That airspace S of Aberdeen, Md., bounded on the SE by VOR Federal airway No. 16, on the S by VOR Federal airway No. 44, on the W and NW by VOR Federal airway No. 123, and on the NE by the Wilmington, Del., control area extension (601.1378), including the airspace which lies within the Aberdeen, Md., Restricted Area (R-54).

# § 608.28 [Amendment]

3. In § 608.28 Maryland Aberdeen, Md., (R-54) (Washington Chart) is amended

Aberdeen, Md., (R-54) (Washington Chart)

Description by geographical coordinates. From a point near Aberdeen, Md., at latitude 39°30′30″ N., longitude 76°10′00″ W.; SE to latitude 39°29′00″ N., longitude 76°08′00″ W.; ENE to latitude 39°29′30″ N., longitude 76°08′00″ W.; ENE to latitude 39°27′00″ N., longitude 76°00′30″ W.; SW to latitude 39°-19′47″ N., longitude 76°11′34″ W.; SSW to latitude 39°12′10″ N., longitude 76°16′30″ W.; W to latitude 39°12′45″ N., longitude 76°12′30″ W.; No latitude 39°12′45″ N., longitude 76°22′30″ W.; NNE to latitude 39°17′30″ N., longitude 76°19′45″ W.; NW to latitude 39°18′30″ N., longitude 76°22′00″ W.; N to latitude 39°22′00″ N., longitude 76°22′00″ W.; NE to latitude 39°26′10″ N., longitude 76°14′50″ W.; NE to latitude 39°27′00″ N., longitude 76°12′30″ W.; NE to point of beginning. From a point near Aberdeen, Md., at latitude point of beginning.

Designated altitudes. Surface to unlim-

ited.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, Washington ARTC Center (flights thru restricted area authorized only after obtaining prior approval from the Federal Aviation Agency, Air Traffic Control).

These amendments shall become effective 0001 e.s.t., January 14, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on November 18, 1959.

> ALAN L. DEAN, Acting Administrator.

[F.R. Doc. 59-9897; Filed, Nov. 23, 1959; 8:45 a.m.]

[Airspace Docket No. 59-LA-65] [Amdt. 45]

# PART 608—RESTRICTED AREAS

#### Revocation

The purpose of this amendment to Part 608 of the regulations of the Administrator is to revoke the Parker, Colo., Restricted Area (R-195) (Denver Chart).

The U.S. Air Force has stated they no longer have a requirement for Restricted Area R-195. Therefore, this area is unjustified as an assignment of airspace and revocation thereof will be in the public interest.

Since this amendment reduces a burden on the public, compliance with the Notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessarv.

In consideration of the foregoing, the following action is taken: In § 608.15, the Parker, Colo., Restricted Area (R-195) (Denver Chart) (23 F.R. 8578) is revoked.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on November 17, 1959.

ALAN L. DEAN, Acting Administrator. .

[F.R. Doc. 59-9898; Filed, Nov. 23, 1959; 8:45 a.m.1

> [Airspace Docket No. 59-FW-75] [Amdt. 44]

# PART 608-RESTRICTED AREAS Revocation

The purpose of this amendment to Part 608 of the regulations of the Administrator is to revoke the Shumaker, Ark., Restricted Area (R-439) (Shreveport Chart).

The U.S. Navy has stated they no longer have a requirement for Restricted Area R-439. Therefore, this area is unjustified as an assignment of airspace and revocation thereof will be in the public interest.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure, and effective date requirement of Section 4 of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, the following action is taken: In § 608.13, the Shumaker, Ark., Restricted Area (R-439) (Shreveport Chart) (23 F.R. 8576) is revoked.

This amendment shall become effective upon date of publication in the FEDERAL REGISTER.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on November 17, 1959.

> ALAN L. DEAN. Acting Administrator.

[F.R. Doc. 59-9899; Filed, Nov. 23, 1959; 8:45 a.m.]

# Title 32—NATIONAL DEFENSE

Chapter V-Department of the Army SUBCHAPTER E-ORGANIZED RESERVES

# PART 562—RESERVE OFFICERS' TRAINING CORPS

# Organization and Training of Units

Sections 562.16 through 562.40 are revoked and the following substituted therefor:

§ 562.16 Maintenance of required standards.

(a) Major commanders will periodically inspect and review the training of each ROTC unit. In addition, when an institution fails to maintain required standards, the professor of military science and tactics (PMST) will report the deficiency in writing to the major commander. The following factors will be included in the report when pertinent:

(1) Attitude of the authorities regarding the failure of the institution to maintain the requirements of law and regulations.

(2) Attitude of the faculty toward ROTC training.

(3) Attitude of the student body toward ROTC training.

(4) A statement of the efforts of the PMST to overcome difficulties and to maintain a successful unit.

(b) The PMST will not report failure to maintain enrollment required by § 562.15(b) (1) until after the end of the academic year in which enrollment was deficient. Failure to meet minimum production requirement will not be reported until after the end of the production year in which production was deficient.

(c) Upon receipt of report of inspection indicating deficiencies in training or report from PMST initiated under paragraph (a) of this section, the major commander will promptly contact the institutional authorities for the purpose of evolving corrective action. Appropriate recommendations will be made by the major commander through the Commanding General, United States Continental Army Command, to The Adjutant General, Washington 25, D.C., Attn. AGPB-O. Recommendations may include, but need not be limited to; temporary waiver of a nonstatutory requirement, placing the unit on probation or withdrawal of the unit. The recommendation to waive a requirement must be based upon unusual circumstances, such as:

(1) Request for waiver of the enrollment requirement for a single school year will be based on exceptional survival rates that indicate the minimum production standard will be maintained despite failure to meet the enrollment requirement.

(2) Request for waiver of the requirement to produce 25 officers will be limited to cases involving a single class where resumption of normal production in subsequent classes is indicated.

(d) When it is determined that an ROTC unit should be placed on probation, the major commander will be immediately notified, and he will promptly notify the school officials of the probationary status of the unit. A unit placed on probation will remain in a probationary status for 1 academic year. At the end of this period, the major commander will inform The Adjutant General, Attn: AGPB-O, of the status of the unit, adding his recommendation. Based on this report, Headquarters. Department of the Army, will authorize the major commander to take further action, such as to remove the unit from probation, continue the unit on probation, withdraw the unit, etc.

(e) When a unit of the military schools or junior division is on probation, the unit will not be considered for the designation "Honor ROTC Unit." A school in the military schools division will not be authorized to designate honor graduates while the unit is on probation.

# § 562.17 Discontinuance of an ROTC

(a) School request. The authorities of an institution desiring the discontinuance of an ROTC unit should promptly notify the appropriate major commander in writing through the PMST.

(b) For cause. Recommendation for withdrawal of a unit for reasons other than a request by the school officials will be made only for cause, including, but not limited to the following:

(1) Failure of the institution to maintain the requirements for the maintenance of a unit as set forth in § 562.15.

(2) Failure of an institution to remedy the cause which resulted in the unit being placed on probation.

(3) When withdrawal serves the best

interests of the service.

- (c) Method of withdrawal. The major commander will make every effort to effect the orderly phase-out of ROTC training and of enrolled students. Upon receipt of notification of withdrawal of an ROTC unit:
- (1) The phasing out of the ROTC will be so arranged as to minimize the effect upon the institution and the students.

(2) New enrollments will not be ac-

cepted.

(3) Currently enrolled students will, when practicable, be given the opportunity to complete the 2-year course in which enrolled. When possible, the unit will continue in operation for 1 academic year. This is not applicable to junior division units. A student who has completed the basic course and meets the provisions of § 562.35 may be authorized to compress the advanced course into the 1 academic year the unit remains at the

# § 562.18 Ineligibles.

The following students are not eligible for enrollment:

- (a) Aliens.
- (b) A student who is a conscientious objector. If a student has been a conscientious objector, he will be required to furnish an affidavit which expresses his abandonment of such beliefs and principles so far as they pertain to his willingness to bear arms and to give full and unqualified military service to the United States.

(c) A student who was convicted by civil court or any type of court-martial for offense(s) other than minor traffic violations (for which a fine or forfeiture of \$50 or less was imposed), unless a waiver is granted. Waivers are not required for disciplinary actions in connection with the provisions of Article of War 104 or Article 15, Uniform Code of Military Justice. The student may request a waiver of conviction by a civil or military court when the offense is nonrecurring. Each request for waiver must include the student's date of birth and a statement that the student has not been convicted of any violation other than those reported. The request must be accompanied by an affidavit setting forth the circumstances concerning the convictions reported. Major commanders may grant waivers for convictions of offenses under military or civil codes, including unfavorable juvenile court decisions, provided:

(1) The personal conduct and character of the individual at the time of requesting the waiver are above reproach, and his conduct since the offense has demonstrated his ability to meet the requirements for good citizenship.

(2) In the opinion of the PMST, the potential value of the individual as an

officer is very high.

- (3) Request for waiver of offense listed in subdivisions (i), (ii) and (iii) of this subparagraph is weighed carefully by the PMST and the major commander, and approval is granted only when circumstances clearly warrant such action. bearing in mind that the applicant may be placed in an unfair competitive position as an officer. Determinations on requests for waivers of the following offenses will not be delegated below major command headquarters level:
- (i) A felony under local, Federal, or military law.
- (ii) An offense which resulted in sentence to confinement in prison stockade or detention area, or which resulted in sentence to hard labor.
- (iii) An offense involving moral turpitude.
- (d) A student who has been relieved from active duty or separated from service for one of the following reasons:
- (1) Under other than honorable conditions, except when such discharge was changed to separation "under honorable conditions." However, an individual is not eligible for enrollment solely because of such change. The student will not be enrolled until prior approval is obtained from The Adjutant General, AGPB-O.
  - (2) For unsatisfactory service.
- (3) As a security risk or for any reason other than security while undergoing investigation for security reasons by the armed force.
- (e) A student who fails to satisfy the loyalty requirements as prescribed in §§ 562.23 and 562.24.

### § 562.19 Enrollment quotas.

(a) Quotas for the enrollment of students will be established and allotted as required by the Department of the Army.

(b) Qualified male students will be selected and enrolled by the PMST in the various divisions within quota limitations. Where branch material units

exist, senior division students will be enrolled so far as possible in the branch of their choice, if qualified therefor. When quotas necessitate selection of only a portion of qualified applicants, the PMST will give full consideration to all those eligible, including transfer students and will select for enrollments those who are best qualified.

(c) At an institution which maintains an Air Force ROTC unit in addition to an Army ROTC unit, college freshmen who apply for ROTC will be enrolled in the service of their choice within quota limitations and limitations imposed by joint Army-Air Force policies in effect at time of enrollment. See § 562.1 to 562.9.

#### § 562.20 Enrollment of students at institutions where military training is required.

Students who are required to participate in military training by institutional regulations or State laws and who meet the requirements for enrollment prescribed in §§ 562.21, 562.22, 562.23 and 562.24 will be enrolled in the ROTC within quota limitations.

#### § 562.21 General requirements for enrollment.

Each student must meet the following requirements to be eligible for enrollment in any division of the ROTC:

(a) Educational requirements. Title 10, United States Code, section 4382(d), limits enrollment to a person who is a student at an institution where an ROTC unit is established.

(b) Citizenship requirement. Title 10, United States Code, section 4382(d), limits enrollment to male citizens of the United States.

(c) Age requirements.—(1) Minimum. Title 10, United States Code, section 4382(d), requires that the student must be at least 14 years of age.

(2) Maximum. Enrollment will be limited to students who can qualify for appointment as second lieutenant prior to reaching 28 years of age.

(d) Medical requirements. See §§ 562.22, 562.23 and 562.24 for medical requirements for enrollment in each division of the ROTC.

(1) Waivers. A waiver of a physical defect will be granted only in accordance with pertinent Army regulations.

- (2) Veterans. A student is not disqualified for enrollment because of receiving compensation from the Veterans Administration for a temporary or limited physical disability. Such student is eligible for enrollment, if otherwise qualified, and to receive concurrently compensation from Veterans Administration and allowances authorized ROTC students.
- (e) Character requirement. Good moral character is a requirement for enrollment and continuance.
- (f) Other requirements. (1) The applicant must have the approval of the head of the institution or his representative.
- (2) If previously enrolled in an officer candidate type training course, the applicant must be favorably recommended for other officer training programs by the officer in charge.

- § 562.22 Requirements for enrollment in the junior division and MST-1 and -2 course, military schools division.
- (a) General. Each student enrolling in the junior division or MST-1 and -2 course of the military schools division must meet the requirements set forth in § 562.21.
- (b) Medical requirements. Each applicant must be medically fit to undergo ROTC training.
- § 562.23 Requirements for enrollment in basic course or MST-3 and -4 course.

In addition to the general requirements for enrollment prescribed in \$562.21, each student applying for enrollment in the basic course or MST-3 and -4 course must meet the following requirements:

- (a) Academic requirements—(1) MS

  1. Be enrolled in the college freshman
  academic year, except:
- (i) When compression of the course is authorized (§ 562.35).
- (ii) In case of an academic sophomore enrolled in a course which requires 5 years for the attainment of the first degree, when approved by the PMST and the institutional head.
- (2) MST-3. Be enrolled in the junior academic year of a secondary school, except when compression is authorized (§ 562.35).
- (b) Medical requirements—(1) MS 1. Be medically fit to perform military training.
- (2) MST-3. Be medically fit to undergo ROTC training.
- (c) Mental requirements. Successfully complete such survey and general screening tests as may be prescribed.
- (d) Contractural requirements. See § 562.30.
- (e) Loyalty requirements. Satisfactorily execute the Loyalty Oath-ROTC (Item 15, DA Form 131 (ROTC Student's Record)). If the student refuses to sign the oath, enrollment will be denied him. This does not preclude action under § 562.25 in appropriate cases. A student who is denied enrollment because of refusal to sign the oath will not be permitted to wear the Army ROTC uniform or insignia.
- (f) ROTC training requirements. If enrolling in MST-3, should have completed MST-1 and -2 or the equivalent.
- § 562.24 Requirements for enrollment in advanced course or MST-5 and -6 course.

, In addition to the general requirements for enrollment prescribed in § 562.21, a student applying for enrollment in the advanced course or MST-5 and -6 course must meet the following requirements:

- (a) Officer potential. Demonstrate qualities and positive potential for becoming an effective officer. Leadership potential will be emphasized as a very important single factor to be considered for enrollment and continuance in the program.
- (b) Medical requirements. Meet the medical standards prescribed for apointment in the Army Reserve.
- (c) Loyalty requirement. Satisfactorily execute DD Form 98 (Armed Forces

Security Questionnaire). This requirement will be completed in sufficient time to permit adjudication of the case prior to the anticipated date of enrollment. No student will be authorized to enroll in either course, unless he has satisfactorily completed DD Form 98, nor will he be authorized to pursue the course under the provisions of § 562.25. The execution of DD Form 98 prior to admission will not exempt the student from execution of the form at the time of appointment. Prior to being requested to sign the form, the student will be oriented as to the provisions therein. The consequences of false or incomplete certification or refusal to sign the form with reference to future character or background inquiries and investigations will be explained.

# § 562.25 Training of students ineligible for enrollment.

When desired by institutional authorities, male students who are ineligible for enrollment may be permitted to pursue the course, subject to the following conditions:

- (a) PMST's may permit participation in the ROTC of noncitizen students and permit disclosure of unclassified ROTC training materials to these students subject to subparagraph (1) or (2) of this paragraph.
- (1) A noncitizen who intends to become a citizen of the United States must present evidence of such intent to the PMST. DA Form 1624-R (fig. 1), which will be reproduced locally on 8- x 5½-inch paper, will be used for this purpose.
- (2) A national of a foreign country (who does not intend to become a citizen) with which the United States entertains friendly relations must present evidence of accreditation from his government. For this purpose each student will obtain a letter from the representative of his government in Washington, D.C., stating that the government has no objection to the student receiving ROTC training. The PMST will retain the original of the letter in the student's file and forward a copy for file to the Office of the Assistant Chief of Staff, G-2, in the Army area in which the institution is located. If the PMST is in doubt regarding the maintenance of friendly relations between the United States and another country, he will forward all papers to the next higher headquarters for deci-
- (b) Any student authorized to pursue ROTC training in accordance with the provisions of this section will be subject to the following conditions:
- (1) The student will not be eligible to receive uniform allowances or to be furnished a Government issued uniform while training at the institution. This does not prohibit the student from wearing a uniform furnished by the institution or purchased with his own funds. Title 10, U.S. Code, section 773, as amended, authorizes students permitted to pursue the course (not enrolled) to wear the ROTC uniform. The provisions of this section do not include students denied enrollment in the basic course because of refusal to sign the loyalty oath, nor authorize foreign nationals to purchase the Army Green uniform.

Army Green uniforms which are worn by foreign nationals pursuing ROTC under the provisions of this paragraph must remain the property of the institution. The institution may issue the uniform to the student for wear during his participation in the ROTC, but the uniform must be returned to the institution at such time as the student completes the course or withdraws therefrom.

(2) The student will not be eligible for commutation of subsistence.

(3) The student will not be eligible for an ROTC deferment or to be exempt from registration under the provisions of section 6(a) of the Universal Military Training and Service Act, as amended.

FIGUR.

(Date)

NONCITIZEN STUDENT APPLICATION FOR ROTC TRAINING (AR 145-350)

(Last name, first name, middle name, without (Age) abbreviations)

Place of birth (City or Town, County, District, Province or State and Country)

Date of birth (month, day, year)
It is my intention to become a citizen of the United

It is my intension to states.

States.

The statements I have made and the intention I have expressed in this affidavit are true to the best of my knowledge and belief.

(Full and true signature of student)

Date Typed name of PMST or Asst PMST

PREVIOUS EDITION OF THIS FORM IS OBSOLETE DA Form 1624-R. 1 Jun 9

(4) The student will not be charged against any enrollment quota, but will be reported on DA Form 130 (Report of Enrollment—Army ROTC).

(c) If the obstruction which prevented enrollment is removed, the student, if otherwise qualified, may be:

- (1) Enrolled in the ROTC. When so enrolled, the student becomes eligible to receive a uniform or uniform allowance (as appropriate) and commutation of subsistence (if appropriate). Such benefits are authorized only while the individual is actually enrolled as an ROTC student. Upon enrollment the student will be reported on DA Form 130 as any other ROTC student.
- (2) Granted credit for that portion of the course(s) successfully completed under the provisions of this section.
- (3) Selected for ROTC deferment.
  (4) Appointed as a commissioned officer upon graduation.
- § 562.26 Eligibility for membership of personnel of Armed Forces.
- (a) No active member of the Army, Navy, Air Force, Marine Corps, or Coast Guard or officer of the Public Health Service will be enrolled.
- (b) A student holding a certificate of eligibility for appointment as an officer will not be enrolled.
- (c) A commissioned officer or former commissioned officer of the Army, Air Force, Navy, Coast Guard, Marine Corps, Naval Militia, or Reserve components thereof will not be enrolled.
- (d) Members of the Army Reserve and Army National Guard of the United

States are eligible for enrollment subject to the following conditions: .

(1) A warrant officer or enlisted member is eligible for membership in the basic course or MST-3 and -4 course provided he is otherwise qualified. Such student will be subject to orders for active duty with his unit in the event the unit is mobilized. In addition, members of the Army National Guard may be required to participate in the Army National Guard training in addition to ROTC training under Army National Guard regulations as determined by the State adjutant general.

(2) A warrant officer or enlisted member of a Ready Reserve unit is not eligible for enrollment in the advanced course (or MST-5 and -6 course) unless he is transferred to a USAR Control Group (Reinforcement). If not so transferred, the student will be dropped from enrollment. Prior to enrollment in the advanced course, the PMST will:

(i) Advise each ROTC applicant that he may not join a Ready Reserve unit while enrolled in the advanced course (or MST-5 and -6 course).

(ii) Inform each applicant who is currently a member of a Ready Reserve unit and the commanding officer of the unit that the student must be transferred to a USAR Control Group (Reinforcement) or be dropped from ROTC enrollment.

- (3) A member of the Army National Guard is not eligible for enrollment in the advanced course or MST-5 and -6 course. However, an individual who is discharged from the Army National Guard of the State and reverts to the Army Reserve for assignment to a USAR Control Group (Reinforcement) is eligible for enrollment in the advance course and MST-5 and -6 course.
- (e) Warrant officers and enlisted members of a Reserve component of the Navy, Air Force, Marine Corps, Coast Guard, or Naval Militia may enroll in the basic course or MST-3 and -4 course if the enrollment quota permits. These individuals will not be placed under a deferment agreement unless separated from such status, or they transfer to the Army Reserve.
- (f) Warrant officers and enlisted members of a Reserve component of the Navy, Air Force, Marine Corps, Coast Guard, or Naval Militia will not be enrolled in the advanced course or MST-5 and -6 course unless formerly separated from such status.
- (g) A former member of a Reserve component of another service who transfers or enlists in the Army Reserve in order to enroll in the advanced course is exempt from the requirement to serve on six months active duty for training within 120 days of enlistment.

# § 562.27 Admission to advanced course.

When a member of the senior division has completed the basic course or received credit therefor and has been selected by the PMST and the head of the institution for advanced course training, he may, if otherwise qualified, be admitted to the advanced course within limits of the enrollment quota allotted to the institution. Enrollment in the advanced course normally will take place MI institutions which have been awarded

when the student begins his junior academic year.

(a) Upon concurrence of the head of the institution, the PMST may defer enrollment in the advanced course in the case of a student whose academic course at time of enrollment requires more than 2 years to complete. Similarly, he may authorize postponement of an unexecuted portion of an advanced course contract in the case of a student who would complete the advanced course prior to his academic course. Deferred enrollment or postponement will extend only until the beginning of that period which will permit the student to complete the advanced course without curtailment or compression into a period of less than 2 academic years. Deferred enrollment or postponement which would result in curtailment will not be permitted.

(b) No portion of the ROTC program of instruction other than ROTC camp will be postponed beyond the date of graduation from the academic course which the student is pursuing, unless the student enrolls in graduate study. A student in a graduate or professional course who completed the basic course as an undergraduate or has received appropriate credit therefor may be enrolled in the advanced course any time prior to the beginning of the last 2 years of his graduate course.

#### § 562.28 Enrollment obligation.

(a) Each course which comprises the senior and military schools divisions covers 2 academic years. The student applies and is accepted for enrollment for the entire course, unless he receives credit toward completion of the course for previous equivalent military training or he is authorized to compress the course into less than 2 academic years.

(b) A student who enrolls in either the basic or advanced course will complete that course as a requirement for his graduation, unless relieved of this obligation by regulations prescribed by the Secretary of the Army. Under provisions of the contract between the institution and the Department of the Army (DA Form 918), the institution agrees to require that each student who enrolls in either the basic or advanced course will be required to complete that course as a prerequisite for his graduation, unless relieved of this obligation by regulations prescribed by the Secretary of the Army. A student who enrolls in either MST-3 and -4 course or MST-5 and -6 course will complete that course as a requirement for his graduation, unless relieved of this requirement by regulations prescribed by the Secretary of the Army.

(c) Enrollment in courses as stated in paragraph (a) of this section is valid. However, a basic course student who executes DA Form 1608 (ROTC Deferment Agreement) obligates himself to enroll in the advanced course, if selected.

## § 562.29 Eligibility of certain graduates for appointment to service academies.

(a) United States Military Academy-(1) General. In accordance with title 10, United States Code, section 4342(e) (3), honor graduates of class MJC and

the rating of "Military-School Honor ROTC Unit" as prescribed in this paragraph may be nominated candidates for admission to the United States Military Academy.

(i) Military-School Honor ROTC Unit. The rating "Military-School Honor ROTC Unit" is awarded by Headquarters, Department of the Army to ROTC units of class MJC and MI institutions, which have maintained an exceptionally high standard of military training and discipline during the school year as determined by the results of annual inspections. This rating is effective only for the academic year following the annual designation.

(ii) Honor graduate. A graduate of an institution whose ROTC unit has been awarded the rating of "Military-School Honor ROTC Unit" and who has been designated as an "Honor Graduate" by the concerted action of the head of the school and the PMST is eligible for such

designation. He must meet the follow-

ing minimum criteria:

(a) Be a graduate during an academic year in which the institution was awarded the "Military-School Honor ROTC Unit" rating or of the academic year following such award. The institution may designate a graduate of a former calendar year provided the institution received the award for the academic year in which the designee graduated. An undergraduate may be designated provided he is in his senior year and the record of his academic, extracurricular and ROTC activities justifies the assumption that he will meet all requirements upon his graduation.

(b) Have been a member of the ROTC

for at least 2 years.

(c) Have shown proficiency in not less than 15 units in subjects prescribed for admission in the United States Military Academy catalog.

(d) Have graduated within the upper third of his class in academic standing.

- (e) Have demonstrated in his academic, extracurricular, and ROTC activities that he possesses outstanding qualities of leadership, character, and aptitude for military service.
- (f) Be a citizen of the United States.(g) Meet all other requirements of law and regulation prescribed for admission to the United States Military Academy, which appear in the catalog of information. The catalog will be furnished upon request to The Adjutant General, Department of the Army, Washington 25, D.C., Attn: AGPB-M.

(2) Nomination of honor graduates. Each institution awarded the rating of "Military-School Honor ROTC Unit" by the Department of the Army may nominate annually up to three honor graduates of that academic year. Adjutant General will invite the institutions to submit nominations on forms provided for that purpose.

(3) Examination procedures. candidate nominated will be issued a letter by The Adjutant General authorizing him to undergo the regular annual West Point entrance examination. All such candidates will compete among themselves at that examination. Available vacancies in the Corps of Cadets,

United States Military Academy, will be filled by those candidates whose records and all-around performance indicate the greatest likelihood of success in a military career.

(b) United States Naval Academy. In accordance with title 10, United States Code, section 6954(b) (4), "Honor Graduates" of class MJC and MI institutions which have been awarded the "Military-School Honor ROTC Unit" rating by the Department of the Army may be appointed candidates for admission to the United States Naval Academy. Information concerning the manner of selection, appointment, and admission of such candidates may be obtained from the Chief of Naval Personnel, Department of the Navy, Washington 25, D.C.

# § 562.29a Discharge or disenrollment.

(a) The PMST will discharge a student from the ROTC for the following reasons:

(1) Withdrawal from school because he is unable to continue. Student may be reenrolled in the ROTC if he reenters an institution with an Army ROTC unit.

(2) Physical disqualification (when so determined by proper authority). If the physical condition is corrected, the stu-

dent may be reenrolled.

- (3) Failure to maintain scholastic standing as required by the institution in academic or ROTC subjects. The student may continue to be enrolled if he has been issued a conditional grade in ROTC or academic courses which may be raised by appropriate remedial study or other action approved by institutional authorities. A student discharged for failure to maintain scholastic standing will not be reenrolled without approval from the major commander.
- (4) Personal hardship. Student may be reenrolled.
  - (5) Disciplinary reasons.

(6) Inaptitude.

(7) Indifference to training.

- (8) Willfully evading the terms of his advanced course contract. (DA Form 597 (Advanced Course Students Contract)).
  - (9) Undesirable traits of character.
- (10) Failure to maintain requirements for enrollment as prescribed in §§ 562.21 to 562.24.

(11) Discovery of a fact or condition that will bar the student from appointment as an officer.

- (b) The PMST will establish a board to consider the case of a student discharged under paragraph (a) (5), (6), (7), (8), or (9) of this section, or when deemed appropriate. A student so discharged will not be reenrolled.
- (c) Payment of commutation of subsistence will be stopped the date of discharge of the student from his contract. Refund of commutation of subsistence paid to the student while under contract will not be required.
- (d) Discharge of a basic or advanced course student relieves the institution of its obligation to require the student to complete the course in which enrolled as a prerequisite for graduation.

(e) A student under contract will not be discharged from the ROTC prior to graduation to accept a commission in the Army National Guard of the United States or the Army Reserve nor will the student be authorized to attend an Army National Guard of the United States or Army Reserve camp in lieu of the required ROTC camp.

## § 562.30 Contracts. ~

(a) Junior division. No contract will be executed between the Government and a student enrolling in the junior division.

(b) Military schools division. No contract will be executed between the Government and a student who enrolls in MST -1 and -2 or MST -3 and -4 courses of the military schools division. Prior to enrollment in MST -5 and -6 course, the student must execute the following contracts:

(1) DA Form 597 (Advanced Course Students Contract). This contract must be properly executed by the student, the PMST, and the head of the institution before the student may be enrolled in MST-5 and become eligible to receive commutation of subsistence. In signing DA Form 597, the student agrees to the provisions of the contract prescribed in paragraph (d) of this section.

(2) DA Form 1608 (ROTC Deferment Agreement) if selected for ROTC deferment under the provisions of section 6(d) (1) of the Universal Military Training and Service Act, as amended.

(3) DA Form 1803 (ROTC Enrollment Agreement) if exempt from induction by reason of prior active military service or if a member of a Reserve component.

- (c) Basic course, senior division. No contract will be executed between the Government and a student enrolling in the basic course except the ROTC Deferment Agreement (DA Form 1608). This form is executed by a basic course student when selected for deferment from induction under the provisions of section 6(d) (1) of the Universal Military Training and Service Act, as amended. In signing this agreement, the student, in consideration of deferment from induction to complete his course of study, agrees to:
  - (1) Complete the basic course.

(2) Enroll in the advanced course at the proper time, if selected.

(3) Accept a commission upon completion of requirements therefor, if tendered.

(4) Serve as a member of the active Army and/or a Reserve component there-of, as required, in satisfaction of the service obligations incurred by signing the agreement.

(d) Advanced course, senior division. Prior to enrollment in the advanced course, the student must execute the following contracts or agreements:

- (1) DA Form 597, which must be properly executed by the student, the PMST, and the head of the institution before the student may be enrolled in the advanced course and become eligible to receive commutation of subsistence. In signing DA Form 597, the student agrees:
- (i) To continue in the ROTC for the remainder of his course at the institution in which enrolled.

 (ii) To devote a minimum of 5 hours a week to the military training prescribed by the Secretary of the Army.

(iii) To pursue the course in camp training prescribed by the Secretary of the Army.

(iv) To accept appointment as a commissioned officer of the Army if such appoinment is tendered.

(v) If commissioned at the time of graduation, and subject to the order of the Secretary of the Army, to serve on active duty as a commissioned officer in the Army for not less than 2 consecutive years or to serve on active duty for training for a period of 6 months unless sooner relieved of such obligation or discharged under regulations prescribed by the Secretary of the Army.

(vi) That his fulfillment of the obligations specified in subdivisions (i), (ii), (iii) and (iv) of this subparagraph is a prerequisite for his graduation from the institution, unless he is relieved of these obligations under regulations prescribed by the Secretary of the Army.

(vii) That this agreement continues in full force and effect in the event the student transfers to another institution. The student agrees to apply for enrollment in the advanced course Army ROTC at the new institution if a unit is maintained thereat.

(2) DA Form 1803, in triplicate, if exempt from induction by reason of prior service in the active military service or if a member of the Army Reserve. In signing DA Form 1803, the student agrees to participate actively in the military service for a period of 4 years after date of commission, if not required by law to serve for a longer period.

(i) The PMST will inform each student that unless ordered to active duty for 2 years, he will be required to serve 6 months active duty for training. During this 6-month period the appointee will attend the basic course of his branch

school.

- (ii) Each student who is exempt from induction by reason of prior active service in the Active Forces will be advised that the policy of the Department of the Army is not to order such individuals to active duty for 2 years involuntarily as long as the officer requirements of the Army can be met from other sources. It will be explained that the Army cannot determine 2 years in advance just how many ROTC graduates will be required for active service at time of appointment. Therefore, servicemen with prior service cannot be given complete assurance that they will not be ordered to active duty involuntarily for 2 years. The PMST will avoid making any statement which could be construed by students as positive assurance that prior service graduates will not be ordered to active duty but may cite the experience of previous years to indicate the probability of receiving such orders.
- (iii) The original and duplicate copies of DA Form 1803 will be retained by the PMST until the student makes application for appointment.
  - (3) DA Form 1608, unless:
- (i) Exempt from induction under section 6(a) of the Universal Military

Training and Service Act, or by reason of prior military service.

(ii) Previously executed during the student's basic course.

#### § 562.31 Pay.

(a) Title 10, United States Code, section 4387, authorizes monetary allowance for subsistence to each student upon enrollment in the advanced course and execution of DA Form 597. This allowance will be paid monthly for a period not in excess of 595 days at a daily rate specified by the Secretary of the Army and announced annually in a Department of the Army circular.

(b) Title 10, United States Code, section 4385, provides for personnel authorized to attend ROTC camp to be paid at the rate prescribed for soldiers in pay grade E-1 with less than 4 months military service. In addition ROTC students are furnished subsistence while attending camp, and transportation and subsistence, or transportation allowances for travel to and from camp.

# § 562.32 Programs, content, and objectives of courses.

The content and objectives of ROTC courses of instruction, including the various branch type and general military science training, are governed by the provisions of the respective Army Training Programs.

(a) Senior division. The senior division provides a 4-year college level program of instruction of military science and consists of the basic course and the advanced course conducted at class MC and CC institutions.

(1) The basic course will consist of a minimum of 3 hours per week (90 hours per year) of formal military instruction as prescribed in § 562.36 and will extend over a period of not less than 2 academic years. The basic course will not be compressed nor curtailed into less than 2 academic years.

(2) The advanced course will consist of a minimum of 5 hours per week (150 hours per year) of formal military instruction as prescribed in § 562,36. The course will extend over a period of 2 académic years, unless a compression of the course is authorized under provisions of § 562.35.

(3) Senior division ROTC will be aligned with the same level of college and university courses. Coalignment does not preclude the granting of credit in lieu of all or part of the basic course for prior ROTC training or active military service. In cases where credit is given, the student will pursue ROTC training corresponding with his academic level, i.e., if a college student is granted credit in lieu of the entire basic course, he will begin MS III when he begins his junior academic year.

(4) Two types of curriculums are presently authorized in the senior division. The GMS curriculum provides instruction in military subjects common to all branches of the Army. Graduates are assigned upon appointment to branches according to their academic training, the needs of the service and their own preference. In effect GMS places all branches of the service on each participating campus. The branch material ROTC program is conducted in a limited number of institutions. These curriculums provide instruction for specific branches of the Army. Graduates normally are assigned upon appointment to the branch for which trained.

(5) The ROTC camp will consist of practical and theoretical military instruction as prescribed in the appropriate Army Training Program and will be of 6 weeks duration. Students normally will attend camp during the summer months between MS III and IV.

(6) ROTC flight training authorized under title 10, United States Code, section 4384, as amended, will be offered to a limited number of students at a limited number of educational institutions on an extra-curricular basis during MS IV. or upon completion of MS IV for those who have completed ROTC training but have not completed their academic requirements for appointment.

(b) Military schools division. The military schools division provides a 6year program of instruction of military science training conducted at class MJC and MI institutions. Class MI institutions are authorized to conduct MST-1 through -4 and class MJC institutions are authorized to conduct MST-1 through -6, MST courses 1 through 6 correspond to academic level grades 9 through 14 respectively and are correlated with senior and junior division training as follows:

Military schools

division Correlation MST-1 and -2.\_ Junior division.

MST-3 and -4\_\_ Basic course senior Division. MST-5 and -6... Advanced course senior division.

The military schools division program of instruction will consist of 210 hours of military training for each academic year of which 157 hours are mandatory as prescribed in § 562.36. The students will attend the senior division ROTC camp prescribed for CMS students during the summer between MST-5 and -6.

(c) Junior division. The junior division provides a 3-year course of instruction in military fundamentals consisting of 3 hours of military training (MT) per week as prescribed in § 562.36, and is conducted at class HS institutions during the last 3 academic years.

#### § 562.33 Courses of instruction.

Title 10, United States Code, section 4384, provides that the Secretary of the Army may prescribe standard courses of theoretical and practical military training for ROTC units. No unit may be established or maintained at an institution unless it provides the prescribed course of military training. A standard course of theoretical and practical training is prescribed for each division of the ROTC. Subjects and outlines of courses of study are published in the 145-series of the Army Training Programs of instruction. Each institution must require that each student enrolled in any ROTC course must devote the required number of hours to ROTC training.

## § 562.34 Acceleration of courses.

The term "academic year" as used in this section will be defined for the department of military science and tactics on the same basis as the academic departments of the institution concerned. When the institution operates on an accelerated basis with regard to all or part of its students, allowing more than 2 semesters or 3 quarters of academic work to be completed in 1 calendar year, a student completing his academic work on an accelerated basis will be permitted to progress in his military course at the same rate, subject to the following conditions:

(a) The arrangement must be approved by the institutional authorities, the major commander, and Headquarters Department of the Army.

(b) No reduction in the scope or content of the ROTC course will be permitted.

#### § 562.35 Compression of courses.

- (a) There is no authority under the law to compress the basic course into less than 2 academic years. Under exceptional circumstances major commanders may authorize a compression of the advanced course for a student who is specially qualified and highly motivated. provided all of the following conditions exist:
- (1) Student will be eligible for graduation from the institution before he can complete the advanced course in the normal manner, or the student cannot complete the advanced course in the normal manner because of withdrawal of the unit.
- (2) Student agrees to complete all prescribed subjects of the advanced course program of instruction without reduction in scope or content, and is subject to written examinations in all subjects.

(3) Student agrees to attend the prescribed ROTC camp.

(4) PMST believes the student possesses exceptional aptitude and has the capacity to complete the course in the time available.

(5) Students successfully completes appropriate screening tests.

(b) A student who is authorized to compress the ROTC program by enrolling in MS II and pursuing MS III concurrently during his junior academic year will be subject to the following conditions:

(1) During the year of concurrent training, the student:

(i) Will not be paid commutation of subsistence.

(ii) Will wear the uniform provided basic course students.

(iii) Will be carried on the rolls as an MS II student.

(2) Upon completion of the junior academic year and MS II and III, the student may:

(i) Be permitted to sign a contract and be enrolled in the advanced course.

(ii) Be issued a uniform prescribed for advance course students or authorized commutation in lieu thereof.

(iii) Receive commutation for the remaining portion of advanced course.

(c) A student who is authorized compression of MS III and IV during senior year will be carried on the rolls as an MS IV student, and he will be paid commutation of subsistence and authorized a uniform or commutation in lieu thereof prescribed for advanced course students.

(d) The granting of authority for compression of the advanced course will not be construed as a waiver for any condition of non-eligibility which would preclude enrollment in the course or which would preclude appointment as a commissioned officer in a component of the Army.

(e) A compression of the course will not be authorized in the case of a student eligible for enrollment in the advanced course 2 or more years prior to the date of his graduation from the institution.

(f) Upon approval of the PMST and head of the institution, compression of courses within the military schools division is authorized for students with advanced academic standing. Where compression is authorized, the student will be enrolled in the lower class and will be so reported on enrollment reports.

### § 562.36 Hours of instruction.

(a) General. An "hour" in the program of instruction represents the customary academic hour of 50 minutes.

(b) Hours required. The minimum number of hours of ROTC instruction required to be given during the academic year is as follows: (time spent in preparation for instruction will not be counted in satisfaction of this requirement):

Course	Hours of instruction	
	Week	Year.
Advanced course	53555 53	150 90 157 157 157 96

<sup>1 210</sup> hours per year (or 7 hours per week) are prescribed for the MST courses, of which 157 hours are mandatory.

(c) Distribution. With the approval of the major commander, the required hours of instruction may be redistributed throughout the year in accordance with the conditions existing at the particular institution.

## § 562.37 Academic credit.

(a) Academic credit toward the granting of a degree should be granted for the completion of military courses on the same basis as for nonmilitary courses of the same academic level.

(b) Credit in ROTC courses for instruction received in the nonmilitary departments of the institution will be limited to that currently authorized by the Department of the Army.

# § 562.38 Grading.

A system of grading similar to that used in other departments of the institution will be utilized by the department of military science and tactics.

# § 562.39 Absence from instruction.

(a) Absence from training or instruction will be excused only for sickness, injury, or other exceptional reasons. student who is absent from any part of the practical or theoretical instruction will be required, according to the practice at the particular institution, to make up the

instruction missed before being credited institution. It will not however, exceed with completion of either the basic course, advanced course, or MST-3 and -4, or MST-5 and -6 courses.

(b) In the case of a student under contract, commutation will be deducted from the student's allowance for each unauthorized absence from ROTC train-

### § 562.40 Placement for previous military training.

(a) Placement consists of assigning students who have had previous military training or service to advanced classes in ROTC in accordance with their knowledge of military subjects.

(b) The PMST will determine the placement acceptable to the Army for each student requesting same. Whether or not placement is granted and the amount thereof is the prerogative of the

that determined acceptable to the Army or the limitations imposed by paragraph (e) of this section. Placement examinations (oral, practical, or written) may be used at the discretion of the PMST.

(c) Placement will not be exercised indiscriminately. Each case will be judged individually so that the best interest of both the student and the serv-

ice will be achieved.

(d) The Department of the Army policy is that placement will be granted for substantially equivalent training. To deny placement for such training results in repetitive instruction wasteful of the student's time and Army effort. On the other hand placement in excess of that justified has an adverse effect upon successful completion of the course.

(e) The following limitations for placement are established:

	Credit for placement		
Previous training	Senior division	Military schools division	Junior division
Active service or active duty training (ACDUTRA) in United States Army, Navy, Air Force, Marine Corps, or Coast Guard: Less than 6 mos 6 mos—12 mos————————————————————————————————————	None Ms I	None MST-1, -2, and	None. MT 1, 2, and 3.
12 mos or more	MS I and MS II	-3. MST-1, -2, and	
Active service or ACDUTRA (U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard) and ROTC training (Army, Navy, or Air Force): Less than 6 mos military service or ACDUTRA	MS I	MST-1, -2, and	MT 1, 2, and 3.
and 1st year senior ROTC or MST-1,-2, and -3 or MT 1, 2, and 3. 6 mos or more military service or ACDUTRA and 1st year senior ROTC or MST-1, -2, and -3 or MT 1, 2, and 3. (Student may pursue MS II, if he so desires, and is qualified.)	MS I and II	-3. MST-1, -2, and -4.	
if he so desires, and is qualified.) Attendance at service academies Army, Navy, Air Force, and Coast Guard):  1 year	Ms I	MST-1, -2, and -3.	
2 years	MS I and II	and -4.	
3 or more years	MS I, II, and III	MST-1, -2, -3, -4, and -5.	
Senior division ROTC (Army, Navy, or Air Force): MS I, NS I, or AS I	MS I	MST -1, -2, and -3.	
Basic course		MST-1, -2, -3,	
MS III, NS III, or AS III or more	MS I, II, and III	MST-1, -2, -3, -4, and -5.	
Military schools division ROTC: MST-1	IMST	(Full credit)	MT 1. MT 1, 2, and 3.
MST-1, -2, and -3. MST-1, -2, -3, and -4. MST-1, -2, -3, -4, and -5.	MS I and II MS I, II, and III	do	,
Junior division ROTC: MT 1 MT 1 and 2	None	None MST-1	(Full credit.)
MT 1, 2, and 3	M81	MST-1 and -2	Do.
MI 1 and 2	None do MS I	None MST -1. MST -1 and -2.	MT 1 and 2.

<sup>1</sup> If conducted under supervision of PMST who is a Reserve or Retired Army officer.

(f) Training completed more than 5 years prior to enrollment or training received when student was less than 14 years of age will not be considered for placement.

# § 562.41 Interservice transfers.

- (a) The procedure for transfer of students between Army and Air Force ROTC units is set forth in the Joint ROTC Policies published as appendix to AR 145-5.
- (b) Interservice transfers will be limited to exceptional cases.
- (c) In case of requests for transfer to Army ROTC, the PMST will consider the effect such transfers will have on enroll-

ment quotas and existing Army-Air Force policies. Only those requests will be approved when it is determined the student will complete the entire program of instruction, which in the case of advanced course students will include ROTC camp. Placement may be granted for that part of the course except ROTC camp which the student successfully completed in the Air Force ROTC as provided in § 562.40.

(d) A request for transfer to Air Force ROTC should include an indorsement from the officer in charge of the unit to which transfer is being requested, indicating tentative approval of transfer

contingent upon approval of the proper authorities of the Army.

- (e) Discharge of a student for the purpose of accomplishing a transfer under the provisions of this section will be for the convenience of the Government.
- (f) Transfers between Army and Naval ROTC units are not authorized.

# § 562.42 Military training certificates.

Except students appointed upon completion of ROTC instruction, a military training certificate will be given to indicate the portion of ROTC completed or to indicate the student's designation as a distinguished military student or distinguished military graduate.

(a) DA Form 136 (Military Training Certificate—Reserve Officers' Training Corps) will be given the student who successfully completes the military schools division and 2 years of undergraduate study at a class MJC institution.

(b) DA Form 134 (Military Training Certificate—Reserve Officers' Training Corps) will be issued to the student who successfully completes any portion of the junior division, military schools division (except as stated in paragraph (a) of this section), or senior division.

(c) DA Form 2163 (Distinguished Military Student Certificate) will be presented to each distinguished military student.

(d) DA Form 2164 (Distinguished Military Graduate Certificate) will be presented to each distinguished military graduate.

[AR 145-350, May 26, 1959] (Sec. 8012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 4381-4387, 70A Stat. 246-248; 10 U.S.C. 4381-4387)

> Major General, U.S. Army, The Adjutant General.

[F.R. Doc. 59-9895; Filed, Nov. 23, 1959; 8:45 a.m.1

# Title 41—PUBLIC CONTRACTS

Chapter 3—Department of Health, Education, and Welfare

# PART 75-DELEGATIONS OF AUTHORITY

Subpart A-General Delegation

3-75.1 Authority delegated.

Sec.

### Subpart B-Delegatees and Specific Limitations

3-75.2 Food and Drug Administration.

3-75.3 3-75.4 Office of Education.

Office of Vocational Rehabilitation. 3-75.5 Saint Elizabeths Hospital.

3-75.6 Public Health Service.

Social Security Administration. 3-75.7

3-75.8 Office of Field Administration.

3-75.9 Office of Administration, Division of General Services.

AUTHORITY: §§ 3-75.1 to 3-75.9 issued under General Services Administration Delegation 363 (24 F.R. 2302) and §§ 2-500.40 and 2-500.60, as amended, of the Statement of Organization and Delegation of Authority, Secretary, Department of Health, Education, and Welfare (22 F.R. 1049, 24 F.R. 8612).

# Subpart A-General Delegation § 3-75.1 Authority delegated.

Authority to make purchases of and contracts for property or services, to sign

and issue purchase orders, contracts and. § 3-75.4 Office of Vocational Rehabilitacertificates of award in connection therewith, and to use the procurement provisions contained in Title III, Public Law 152, 81st Congress (63 Stat. 377) (Federal Property and Administrative Services Act of 1949) as amended (41 U.S.C. 251 et seq.): Provided, That this authority shall be exercised in accordance with applicable limitations and requirements of Public Law 152, 81st Congress, as amended, particularly sections 304 and 307 and policies, procedures, limitations, and controls prescribed by the General Services Administration and the Department.

# Subpart B—Delegatees and **Specific Limitations**

### § 3-75.2 Food and Drug Administration.

- (a) Authority stated in § 3-75.1 is delegated to:
  - (1) Commissioner.
  - (2) Deputy Commissioner.
  - (3) Executive Officer.
  - (4) Assistant Executive Officers.
  - (5) General Supply Officer.
- (b) Authority delegated in this section is limited as follows:
  - (1) No authority is delegated to:
- (i) Negotiate purchases or contracts under section 302(c) (6), (8), (9), (11), (12) and (13) or to make advance payments under section 305.

(ii) Purchase or contract for administrative supplies, equipment, or services for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services.

(c) Authority delegated in this section may be redelegated by the Commissioner in full or in part to officials of the Food and Drug Administration. However, such redelegation must be reported immediately to the Office of Administration and shall not be effective until published in the Federal Register.

# § 3-75.3 Office of Education.

- (a) Authority stated in § 3-75.1 is delegated to:
  - (1) Commissioner.
- (2) Deputy Commissioner.
- (3) Executive Officer.
- (4) Fiscal Management Officer.
- (b) Authority delegated in this section is limited as follows:
  - (1) No authority is delegated to:
- (i) Negotiate purchases or contracts under sections 302(c) (1), (2), (3), (6), (7), (8), (9), (12), (13) and (14), or to make advance payments under section 305.
- (ii) Purchase or contract for administrative supplies, equipment, or services for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services.

(iii) Make the determinations and decisions specified in section 302(c) (11) for contracts in excess of \$25,000.

(c) Authority delegated in this section may be redelegated by the Commissioner in full or in part to officials in the Office of Education, except for negotiation under section 302(c)(11). However, such redelegations must be reported immediately to the Office of Administration and shall not be effective until published in the Federal Register.

# tion.

- (a) Authority stated in § 3-75.1 is delegated to:
  - (1) Director.
  - (2) Deputy Director.
- (3) Assistant Director, Management Services.
- (4) Chief, Division of Personnel and Administrative Services.
- (b) Authority delegated in this section is limited as follows:
  - (1) No authority is delegated to:
- (i) Negotiate purchases or contracts under section 302(c) (1), (2), (3), (6), (7), (8), (9), (10), (11), (12), (13) and (14) or to make advance payments under section 305.

(ii) Purchase or contract for administrative supplies, equipment, or services for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services.

(c) Authority delegated in this section may be redelegated by the Director in full or in part to officials of the Office of Vocational Rehabilitation. However, such redelegations must be reported immediately to the Office of Administration and shall not be effective until published in the FEDERAL REGISTER.

#### § 3-75.5 Saint Elizabeths Hospital.

- (a) Authority stated in § 3-75.1 is delegated to:
  - (1) Superintendent.
  - (2) Assistant Superintendent.
  - (3) Executive Officer.
  - (4) Administrative Officer. (5) Chief, Purchasing Section.
- (6) Assistant Chief, Purchasing Sec-

(b) No authority is delegated to negotiate purchases or contracts under section 302(c) (1), (5), (6), (7), (8), (11), (12), (13) and (14) or to make advance payments under section 305.

(c) Authority delegated in this section may be redelegated by the Superintendent in full or in part to officials of Saint Elizabeths Hospital. However, such redelegations must be reported to the Office of Administration and shall not be effective until published in the FEDERAL REGISTER.

#### § 3-75.6 Public Health Service.

- (a) Authority stated in § 3-75.1 is delegated to:
  - (1) Surgeon General.
  - (2) Deputy Surgeon General.
  - Executive Officer.
  - (4) Assistant Executive Officer.
- (5) Chief, Division of Administrative Services.
- (b) Authority stated in § 3-75.1 to negotiate contracts under Title III, section 302(c)(11), Public Law 152, 81st Congress, as amended, is delegated to:
  - (1) Chief, Supply Branch, DAS.
- (2) Director, National Institutes of Health.
  - (3) Chief, SMB, NIH.
  - (4) Head, Research Contracts, NIH.
- (c) Authority delegated in this section is limited as follows:
  - (1) No authority is delegated to:
- (i) Negotiate purchases or contracts under section 302(c) (12) or to make advance payments under section 305.

(ii) Purchase or contract for administrative supplies, equipment, and services for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services.

(iii) Make determinations and decisions specified in section 302(c) (11) for contracts in excess of \$25,000.

(iv) Make determinations or decisions

specified in section 302(c) (13).

(d) Authority delegated in this section may be redelegated by the Surgeon General in full or in part to officials in the Public Health Service, except for negotiation under section 302(c) (11). However, such redelegations must be reported to the Office of Administration and shall not be effective until published in the FEDERAL REGISTER.

# § 3-75.7 Social Security Administration.

- (a) Authority stated in § 3–75.1 is dele\_ gated to:
  - (1) Commissioner.
  - (2) Deputy Commissioner.
  - (3) Administrative Officer.
- (4) Chief, Procurement and Property Section, Bureau of Old-Age and Survivors Insurance.
- (5) Assistant Chief, Procurement and Property Section, BOASI.
  - (6) Chief, Purchasing Unit, BOASI.
- (b) Authority delegated in this section is limited as follows:
  - (1) No authority is delegated to:
- (i) Negotiate purchases under section 302(c) (5), (6), (7), (3), (9), (11), (12), (13) and (14) or to make advance payments under section 305.

(ii) Purchase or contract for administrative supplies, equipment, or services for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services.

(c) Authority delegated in this section may be redelegated by the Commissioner in full or in part to officials in the Social Security Administration. However, such redelegations must be reported immediately to the Office of Administration and shall not be effective until published in the Federal Register.

# § 3-75.8 Office of Field Administration.

- (a) Authority stated in § 3-75.1 is dele-
- (1) Director of Field Administration.
- (2) Chief, Division of Field Management.
  - (3) Regional Directors.
- (4) Regional Executive Officers or Assistants.
- (5) Chiefs, Regional General Services Sections.
- (b) Authority delegated in this section is limited as follows:
  - (1) No authority is delegated to:
- (i) Negotiate purchases or contracts under section 302(c) (5), (6), (7), (8), (9), (11), (12), (13) and (14) or to make advance payments under section 305.
- (ii) Purchase or contract for administrative supplies, equipment, or services for headquarters offices which are obtained through the Procurement and Supply Management Branch, Division of General Services.

(c) Authority delegated to the Director of Field Administration may be redelegated in full or in part to officials of the Office of Field Administration. However, such redelegation must be reported immediately to the Office of Administration and shall not be effective until published in the Federal Register.

#### -75.9 Office of Administration, Division of General Services.

- (a) Authority stated in § 3–75.1 is delegated to:
- (1) Director, Division of General Services.
- (2) Chief, Procurement and Supply Management Branch.
  - (3) Chief, Purchase Section.
  - (4) Assistant Chief, Purchase Section.
- (b) Authority delegated in this section is limited as follows:
- (1) No authority is delegated to:(i) The Chief and Assistant Chief, Purchase Section, under section 302(c) (1), (6), (7), (8), (9), (11), (12), (13) and (14).
- (ii) Make advance payments under section 305.
- (iii) Make determinations an decisions specified in section 302(c) (11) for contracts in excess of \$25,000.
- (iv) Make determinations or decisions specified in section 302(c)(12) and (13).

Effective date: March 11, 1959.

JAMES F. KELLY. Acting Director of Administration.

NOVEMBER 16, 1959.

[F.R. Doc. 59-9916; Filed, Nov. 23, 1959; 8:48 a.m.]

# PROPOSED RULE MAKING

# DEPARTMENT OF THE TREASURY

Internal Revenue Service 🔍

I 26 CFR (1954) Part 1 ]

INCOME TAX; TAXABLE YEARS BE-GINNING AFTER DECEMBER 31, 1953

# Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in , a subsequent issue of the FEDERAL REG-ISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DANA LATHAM, Commissioner of Internat Revenue.

The Income Tax Regulations (26 CFR (1954) Part 1) are hereby amended to reflect the amendments of section 1232 of the Internal Revenue Code of 1954 made by sections 50 and 51 of the Technical Amendments Act of 1958 (72 Stat. 1642, 1643), and by section 3(e) of the Life Insurance Company Income Tax Act of 1959 (73 Stat. 140)

Paragraph 1. Section 1.1232 is amend-

(A) By revising subsections (a) (2) and (c) of section 1232 to read as follows:

# 1232 Statutory provisions; bonds and other evidences of indebtedness.

SEC. 1232. Bonds and other evidences of indebtedness—(a) General rule. \* \* \*
(2) Sale or exchange—(A) General rule.

Except as provided in subparagraph (B), upon sale or exchange of bonds or other evidences of indebtedness issued after December 31, 1954, held by the taxpayer more than 6 months, any gain realized which does not exceed-

(i) An amount equal to the original issue discount (as defined in subsection (b)), or

(ii) If at the time of original issue there was no intention to call the bond or other evidence of indebtedness before maturity, an amount which bears the same ratio to the original issue discount (as defined in subsection (b)) as the number of complete months that the bond or other evidence of indebtedness was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity.

shall be considered as gain from the sale or exchange of property which is not a capital asset. Gain in excess of such amount shall be considered gain from the sale or exchange

of a capital asset held more than 6 months.
(B) Exceptions. This paragraph shall not apply to-

(i) Obligations the interest on which is not includible in gross income under section 103 (relating to certain governmental obligations), or

(ii) Any holder who has purchased the bond or other evidence of indebtedness at a

(C) Double inclusion in income not required. This section shall not require the inclusion of any amount previously includible in gross income.

(c) Bond with unmatured coupons detached. If a bond or other evidence of indebtedness issued at any time with interest coupons-

(1) It purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(2) Is purchased after December 31, 1957 and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such evidence of indebtedness by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as gain from the sale or exchange of property which is not a capital asset to the extent that the fair market value (determined as of the time of the purchase) of the evidence of indebtedness with coupons attached exceeds the purchase price. If this subsection and subsection (a) (2) (A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then subsection (a) (2) (A) shall apply with respect to that part of the gain to which this subsection does not apply.

(B) By adding at the end thereof the following historical note:

[Sec. 1232 as amended by secs. 50 and 51, Technical Amendments Act 1958 (72 Stat. 1642, 1643); sec. 3(e), Life Insurance Company Income Tax Act 1959 (73 Stat. 140)]

Par. 2. Section 1.1232-1 is amended by revising paragraph (a) thereof to read as follows:

# § 1.1232-1 Bonds and other evidences of indebtedness; scope of section.

(a) In general. Section 1232 applies to any bond, debenture, note, or certificate or other evidence of indebtedness (referred to in this section and §§ 1.1232-2 through 1.1232-4 as an obligation) (1) which is a capital asset in the hands of the taxpayer, and (2) which is issued by any corporation, or by any government or political subdivision thereof. In general, section 1232(a) (1) provides that the retirement of an obligation, other than certain obligations issued before January 1, 1955, is considered to be an exchange and, therefore, is usually subject to capital gain or loss treatment; and section 1232(a) (2) provides that in the case of a gain realized on the sale or exchange of certain obligations issued at a discount after December 31, 1954, the amount of gain equal to such discount or, under certain circumstances, the amount of gain equal to a specified portion of such discount, constitutes ordinary income. Section 1232 (c) treats as ordinary income a portion of any gain realized upon the disposition of (i) coupon obligations which were acquired after August 16, 1954, and before January 1, 1958, without all coupons maturing more than 12 months after purchase attached, and (ii) coupon obligations which were acquired after December 31, 1957, without all coupons maturing after the date of purchase attached.

Par. 3. Section 1.1232-3 is amended—
(A) By revising paragraph (a) thereof to read as follows:

#### § 1.1232-3 Gain upon sale or exchange of obligations issued at a discount after December 31, 1954.

(a) General rule—(1) Sale or exchange before January 1, 1958. Gain realized upon the sale or exchange before January 1, 1958, of an obligation issued at a discount after December 31,

1954, and held by the taxpayer for more than six months, shall be considered ordinary income to the extent it equals a specified portion of the "original issue discount", and the balance, if any, of the gain shall be considered as long-term capital gain. The term "original issue discount" is defined in paragraph (b) of this section. The computation of the amount of gain which constitutes ordinary income is illustrated in paragraph (c) of this section.

(2) Sale or exchange after December 31, 1957. In the case of gain realized upon the sale or exchange after December 31, 1957, of an obligation issued at a discount after December 31, 1954, and held by the taxpayer for more than six months, section 1232(a) (2) (A) provides that such gain shall be considered ordinary income to the extent it does not exceed—

(i) An amount equal to the entire "original issue discount", or

(ii) If at the time of original issue there was no intention to call the bond or other evidence of indebtedness before maturity, a portion of the "original issue discount" determined in accordance with paragraph (c) of this section,

and the balance, if any, of the gain shall be considered as long-term capital gain. The terms "original issue discount" and "intention to call the bond or other evidence of indebtedness before maturity" are defined in paragraph (b) of this section.

(3) Obligations issued before January 1, 1955. Whether gain representing original issue discount realized upon the sale or exchange of obligations issued at a discount before January 1, 1955, is capital gain or ordinary income shall be determined without reference to section 1232.

(B) By adding at the end of paragraph (b) thereof the following new subparagraph:

(b) Definitions. \* \* \*

(4) Intention to call before maturity—(i) Meaning of term. For purposes of section 1232, the term "intention to call the bond or other evidence of indebtedness before maturity" means an understanding between (a) the issuing corporation (such corporation is hereinafter referred to as the "issuer"), and (b) the original purchaser of such obligation (or, in the case of obligations constituting part of an issue, any of the original purchasers of such obligations) that the issuer will redeem the obligation before maturity. The understanding to call before maturity need not be unconditional; it may, for example, be dependent upon the financial condition of the issuer on the proposed early call date.

(ii) Proof of intent—(a) In general.
Ordinarily the existence or non-existence of an understanding at the time of original issue that the obligation will be redeemed before maturity shall be determined by an examination of all of the circumstances under which the obligation was issued and held. However, if the obligation was part of an issue registered with the Securities and Exchange Commission and was sold to the public (whether by the obligor or by an under-

writer or wholesaler) without representation to the public that the obligor intends to call the obligation before maturity, there shall be a presumption that no such understanding was in existence at the time of original issue.

(b) Circumstances indicating absence of understanding. Examples of circumstances which would be evidence that there was no understanding at the time of original issue to redeem the obligation

before maturity are-

(1) The issue price and term of the obligation appear to be reasonable, taking into account the interest rate, if any, on the obligation, for a corporation in the financial condition of the issuer at the time of issue.

(2) The original purchaser and the issuer are not related within the meaning of section 267(b) and have not engaged in transactions with each other (other than concerning the obligation).

(3) The original purchaser is not related within the meaning of section 267(b) to any of the officers or directors of the issuer, and he has not engaged in transactions with such officers or directors (other than concerning the obligation).

(4) The officers and directors of the issuer at the time of issue of the obligation are different from those in control at the time the obligation is called or the taxpayer disposes of it.

(C) By striking the heading and first sentence of paragraph (c) thereof and inserting in lieu thereof:

(c) Gain treated as ordinary income in certain cases; computation. The amount of gain treated as ordinary income under paragraph (a) (1) or (2) (ii) of this section is computed by multiplying the original issue discount by a fraction, the numerator of which is the number of full months the obligation was held by the holder and the denominator of which is the number of full months from the date of original issue to the date specified as the redemption date at maturity.

(D) By inserting between the second and third sentences of example (1) in paragraph (c) thereof the following new sentence: "At the time of original issue, there was no intention to call the bond before maturity."

(E) By revising paragraph (e) thereof to read as follows:

(e) Amounts previously includible in income. Nothing in section 1232 shall require the inclusion of any amount previously includible in gross income. Thus, if an amount was previously includible in a taxpayer's income on account of obligations issued at a discount and redeemable for fixed amounts increasing at stated intervals, or, under section 818(b), as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 133) (relating to accrual of discount on bonds and other evidences of indebtedness held by life insurance companies); such amount is not again includible in the taxpayer's gross income under section 1232. For example, amounts includible in gross income by a cash receipts and disbursements method taxpayer who has made an election under section 454 (a) or (c) (relating to accounting rules for certain obligations issued at a discount) are not includible in gross income under section 1232. In the case of a gain which would include, under section 1232, an amount considered to be ordinary income and a further amount considered long-term capital gain, any amount to which this paragraph applies is first used to offset the amount considered ordinary income. For example, on January 1, 1955, A purchases a ten-year bond which is redeemable for fixed amounts increasing at stated intervals. At the time of original issue, there was

no intention to call the bond before maturity. The purchase price of the bond is \$75, which is also the issue price. The stated redemption price at maturity of the bond is \$100. A elects to treat the annual increase in the redemption price of the bond as income pursuant to section 454(a). On January 1, 1960, A sells the bond for \$90. The total stated increase in the redemption price of the bond which A has reported anually as income for the taxable years 1955 through 1959 is \$7. The portion of the original issue discount of \$25 attributable to this period is \$12.50, computed as follows:

60 (months bond is held by A)

120 (months from date of original issue to redemption date) ×\$25 (original issue discount)

However, \$7, which represents the annual stated increase taken into income, is offset against the amount of \$12.50, leaving \$5.50 of the gain from the sale to be treated as ordinary income.

PAR. 4. Section 1.1232-4 is amended by striking the first sentence thereof and inserting in lieu thereof:

§ 1.1232-4 Obligations with excess coupons detached.

Section 1232(c) provides that if an obligation which is issued at any time with interest coupons-

(a) Is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(b) Is purchased after December 31, 1957, and the purchaser does not receive all the coupons which first become payable after the date of purchase.

any gain on the later sale or other disposition of the obligation by the purchaser (or by a transferee of the purchaser whose basis is determined by reference to the basis of the obligation in the hands of the purchaser) shall be treated as ordinary income to the extent that the fair market value of the obligation (determined as of the time of the purchase) with coupons attached exceeds the purchase price.

[F.R. Doc. 59-9915; Filed, Nov. 23, 1959; 8:48 a.m.]

# DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 930]

[Docket No. AO-72-A23]

MILK IN TOLEDO, OHIO, MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of

marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Hillcrest Hotel, Madison and 16th Streets, Toledo, Ohio, beginning at 10:00 a.m., on December 1, 1959, with respect to proposed amendments to the tentative marketing agreement and to the order. regulating the handling of milk in the Toledo, Ohio, marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amend-ments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Northwestern Cooperative Sales Association, Inc.:

Proposal No. 1. Amend the schedule in § 930.50(a)(1) to read as follows:

Delivery period Amount March thru June\_\_\_\_\_\$1.20 All other months\_\_\_\_\_ 1.60

Proposal No. 2. Amend § 930.50(b) to provide for the basic formula price to be the Class II price in all months of the year.

Proposal No. 3. Provide for payment of 6 percent interest to be paid by any handler on any account overdue from such handler to the market administrator or to a cooperative association.

Proposed by the Dairy Division, Agri-

cultural Marketing Service:

Proposal No. 4. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the market administrator, 312 Davis Building, 147 Michigan Street, Toledo 2, Ohio, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 19th day of November 1959.

> F. R. BURKE, Acting Deputy Administrator.

[F.R. Doc. 59-9909; Filed, Nov. 23, 1959; 8:47 a.m.]

# 17 CFR Part 965 ]

[Docket No. AO-166-A24]

# MILK IN CINCINNATI, OHIO, MARKETING AREA

# Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Metropole Hotel, 609 Walnut Street, Cincinnati, Ohio, beginning at 10:00 a.m., on December 3, 1959, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Cincinnati, Ohio, marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Cincinnati Milk Sales

Association, Inc.:

Amend § 965.10(c) Proposal No. 1. (2) to provide for diversion of producer milk to a pool plant for the account of a cooperative association.

Proposal No. 2. Amend § 965.11(b) to read as follows:

(b) Any cooperative association with respect to the milk of any producer which is diverted to a pool plant or a nonpool plant by the cooperative during the month.

Proposal No. 3. Amend § 965.53 and § 965.75 by deleting references to "20 miles" and substitute therefor "30 miles" and by deleting the schedule of rates and substituting the following schedule.

Rate p	er
Distance from City Hall , hundredw	eight
(miles) (cents	) `
More than 30 but less than 40	6.0
40 but less than 50	8.0
50 but less than 60	10.0
For each additional 10 miles, or frac-	
tion thereof, an additional	1.5

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 4. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 1195, Cincinnati 1, Ohio, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

day of November 1959.

F. R. BURKE. Acting Deputy Administrator.

[F.R. Doc. 59-9908; Filed, Nov. 23, 1959; 8:47 a.m.1

# FEDERAL AVIATION AGENCY

I 14 CFR Parts 600, 601 I

[Airspace Docket No. 59-WA-286]

# FEDERAL AIRWAYS AND CONTROL AREAS

#### Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6191 and 601.6191 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 191 presently extends from Memphis, Tenn., to Milwaukee, Wis. The Federal Aviation Agency is proposing to extend Victor 191 northerly from the Milwaukee VOR via the Oshkosh, Wis., VOR, a VOR to be installed approximately December 1, 1959, near Stevens Point, Wis., at latitude 44°32′24″ N., longitude 89°30′54″ W., and the Wausau, Wis., VOR, to a VOR to be installed approximately February 1, 1960, on the Oneida County Airport near Rhinelander, Wis., at latitude 45°38'01" N., longitude 89°27'28" W. This extension will provide a VOR airway from Oshkosh to Rhinelander to accommodate air traffic operating between these terminals and the intermediate terminals of Stevens Point and Wausau, Wis.

In consideration of the foregoing, the Federal Aviation Agency proposes to extend VOR Federal airway No. 191 and its associated control areas from Milwaukee, Wis., via Oshkosh, Wis., Stevens Point, Wis., and Wausau, Wis., to Rhinelander, Wis.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Administrator, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within thirty days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Administrator, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at

Issued at Washington, D.C., this 19th the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Administrator.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on November 17, 1959.

> GEORGE S. CASSADY. Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 59-9903; Filed, Nov. 23, 1959; 8:46 a.m.]

## I 14 CFR Part 601 1

[Airspace Docket No. 59-LA-29]

## **CONTROL AREAS**

#### Modification of Extension

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.1068 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency is proposing a modification of the Riverside, Calif., control area extension. The present control area extension includes the airspace east of March AFB bounded on the east by a line extending from latitude 33°51'00" N., longitude 116°50'40" W., to latitude 33°45'45" N., longitude 116°50'00" W.; on the south by VOR Federal airway No. 64; on the north-west by VOR Federal airway No. 8, and on the north by Green Federal airway No. 5; the airspace southeast of March AFB bounded on the north by VOR Federal airway No. 64, on the east by VOR Federal airway No. 117, on the southeast and south by Red Federal airway No. 65, and on the southwest by Caution Area (C-444). The proposed modification would expand the Riverside control area extension to include the airspace which is south of March AFB bounded on the east by VOR Federal airway No. 117, on the south and southeast by VOR Federal airway No. 208; on the west by VOR Federal airway No. 23 and Restricted Area (R-294), on the northwest by VOR Federal airway No. 8 and on the north by VOR Federal airway No. 16. This modification would provide additional control area for the management of air traffic arriving and departing the Marine Corps Air Station, El Toro, Calif., and the March AFB, Riverside, Calif.

In consideration of the foregoing, the Federal Aviation Agency proposes to modify the Riverside, Calif., control area extension to include the airspace south of March AFB, bounded on the east by VOR Federal airway No. 117, on the south, and southeast by VOR Federal airway No. 208, on the west by VOR Federal airway No. 23 and Restricted Area (R-294), on the northwest by VOR Fed-

eral airway No. 8, and on the north by VOR Federal airway No. 16.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Administrator, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, All communications received Calif. within thirty days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Administrator, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Administrator.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on November 17, 1959.

> GEORGE S. CASSADY, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 59-9904; Filed, Nov. 23, 1959; 8:46 a.m.]

# I 14 CFR Part 608 I

[Airspace Docket No. 59-NY-14]

## RESTRICTED AREAS

# Designation of Restricted Area/ Military Climb Corridor

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to \$608.27 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration a proposal by the Department of the Air Force for the designation of a Restricted Area/Military Climb Corridor at Loring Air Force Base, Limestone, Maine. The Military Climb Corridor, designated as a Restricted Area would confine the high-speed, high rateof-climb Century series air defense aircraft, departing from the base on active air defense missions, within a relatively small area. The Restricted Area would provide protection for high-speed air defense aircraft and other users of the airspace during the climb phase of the air defense aircraft mission. A portion of this Military Climb Corridor would extend into Canada. The Department of Transport of the Canadian Government has no objection to the extention of this Military Climb Corridor into the Province of New Brunswick, and agrees to designate the Canadian portion as Restricted Airspace. The overall dimensions of the proposed Restricted Area/Military Climb Corridor, including the Canadian and United States portions would be as follows:

That area centered on the 353° True radial of the Loring AFB TACAN from 5 statute miles north of the airbase to 32 staute miles north of the airbase, 2 statute miles wide at the beginning and uniformly expanding to a width of 4.6 statute miles at the outer extremity. The lower altitude limits in graduated steps would extend from 2,750 feet MSL to 19,750 feet MSL. The upper altitude limits would extend from 15,750 feet MSL to 27,000 feet MSL. Time of use would be continuous. The controlling agency would be the Loring AFB Approach Control. The controlling agency would authorize aircraft to operate within the Climb Corridor when not in use by active air defense aircraft.

In consideration of the foregoing, the Federal Aviation Agency proposes to designate the Limestone, Maine (Loring AFB), Restricted Area/Military Climb Corridor (R-584) (Aroostook Chart) as follows:

Description. That area centered on the 353° True radial of the Loring AFB TACAN extending from 5 statute miles N of the airbase to 32 statute miles N of the airbase having a width of 2 statute miles at the beginning and a width of 4.6 statute miles at the outer extremity, excluding that portion which lies outside of the United States.

#### Designated altitudes

2,750' MSL to 15,750' MSL from 5 statute miles N of the airbase to 6 statute miles N of the airbase.

2,750' MSL to 24,750' MSL from 6 to 7 statute miles N of the airbase.

2,750' MSL to 27,000' MSL from 7 to 10 statute miles N of the airbase.

6,750' MSL to 27,000' MSL from 10 to 15 statute miles N of the airbase except that portion outside the United States.

10,750' MSL to 27,000' MSL from 15 statute miles N of the airbase northward to the United States/Canadian Border.

Time of designation. Continuous.

Controlling agency. Loring AFB Approach
Control.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Administrator, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within thirty days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Administrator, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for exam-

ination at the office of the Regional Administrator.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on No-vember 17, 1959.

GEORGE S. CASSADY, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 59-9905; Filed, Nov. 23, 1959; 8:46 a.m.]

# NOTICES

# ATOMIC ENERGY COMMISSION

[Byproduct Material License No. 4-616-3]

X-RAY ENGINEERING CO.

Order Adding Issues To Be Determined, Requiring Answer Thereto, and Setting Time and Place for Hearing

On October 16, 1959, the Commission issued its order in the above designated cause setting forth that it appeared that X-Ray Engineering Company (X-Ray) had committed acts which were in violation of the terms of its Byproduct Material License, specified certain issues for determination, suspended a portion of X-Ray's radiographic operations, and provided for a hearing. On October 22, 1959, X-Ray filed a request for postponement of hearing and for authority to undertake limited radiographic operations in the State of California. Both requests were granted. On November 9, 1959, the staff filed a motion seeking to add further issues for determination in this proceeding based upon allegations of additional violations of the license issued to X-Ray, and on November 16, 1959, the staff stated that it had been informed by the attorney for X-Ray that he would interpose no objection to the motion to consider additional issues.

Pursuant to the Atomic Energy Act of 1954, as amended, and to the regulations in Parts 2 and 30, 10 CFR: It is hereby ordered, That in addition to the issues specified in the Order of the Commission issued October 16, 1959, the following issues shall also be considered at the hearing ordered by the Commission, the time and place for which are hereinafter designated:

1. Whether X-Ray, the Licensee, did willfully violate the Atomic Energy Act of 1954, as amended, and the Commission's regulations and the order of the Commission dated August 25, 1959, in continuing to conduct radiographic operations:

(a) Without having reduced the quantities of radiation existing outside the trucks operated by W. V. Cook, Amos Clark, Cedric Lewis and Dell McDonald containing byproduct material to comply with the limits prescribed by § 20.102(b), 10 CFR Part 20;

(b) Without having tagged the sealed source containing byproduct material used outside of the shielded exposure device used in radiographic operations by Cedric Lewis to comply with Condition No. 16 of the license;

(c) Without posting the truck used in radiographic operations by Cedric Lewis subsequent to September 15, 1959, to comply with § 20.203(e)(1), 10 CFR Part 20;

(d) Without labeling the byproduct material containers in the trucks used by W. V. Cook, Robert Clark, Amos Clark, Robert Gehring and Cedric Lewis subsequent to September 15, 1959, to comply with § 20.203(f) (1) and (4), 10 CFR Part 20, to indicate the presence of radioactive material and the kind, quantity, and date of measurement of the quantity of the byproduct material stored herein; and

(e) Without labeling the byproduct containers in the trucks used by Dell McDonald and Frank McDonald subsequent to September 13, 1959, to comply with § 20.203(f) (4) to indicate the kind, quantity and date of measurement of the quantity of byproduct material stored therein.

2. Whether the Licensee did willfully violate the Atomic Energy Act of 1954, as amended, and the Commission's regulations in that the Licensee caused byproduct material located in the truck operated by W. V. Cook to be stored in an unrestricted area and not secured against unauthorized removal from the place of storage in violation of § 20.207, 10 CFR Part 20.

It is further ordered, That based upon the informal stipulation between the staff and attorney for X-Ray as to time for answer, X-Ray Engineering Company shall serve upon the staff, and file with the Secretary of the Commission, an answer to the issues specified above pursuant to § 2.736 of the rules of practice, 10 CFR Part 2, on or before November. 25, 1959. Upon failure of the Licensee to file and serve an answer within the time provided, or to appear at the hearing, an order may be issued without further notice, providing that License No. 4-616-3 is modified, suspended, or revoked.

The hearing ordered by the Commission for a determination of all of the issues now specified for consideration

shall convene at 10:00 a.m. on December 2, 1959, in the Courtroom of the United States Customs Court, U.S. Appraisers Building, 630 Sansome Street, San Francisco, California.

Dated: November 17, 1959, German-town, Md.

Samuel W. Jensch, Presiding Officer.

[F.R. Doc. 59-9894; Filed, Nov. 23, 1959; - 8:45 a.m.]

# **CIVIL AERONAUTICS BOARD**

[Docket 8726]

# EASTERN AIRLINES, INC.; ENFORCE-MENT PROCEEDING

# Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that oral argument in the above-entitled proceeding is assigned to be held on December 2, 1959, at 10:00 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., November 18, 1959.

[SEAL]

Francis W. Brown, Chief Examiner.

[F.R. Doc. 59-9935; Filed, Nov. 23, 1959; 8:50 a.m.]

[Docket 9177]

# CAPITAL AIRLINES, INC.; FLINT-GRAND RAPIDS ADEQUACY OF SERVICE INVESTIGATION

# Notice of Oral Argument

In the matter of the investigation of the adequacy of service by Capital Airlines, Inc. to Flint and Grand Rapids, Michigan.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that oral argument in the above-entitled proceeding is assigned to be held on December 9, 1959, at 10:00 a.m., e.s.t.; in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., November 18, 1959.

[SEAL]

Francis W. Brown, Chief Examiner.

[F.R. Doc. 59-9936; Filed, Nov. 23, 1959; 8:50 a.m.]

[Docket 9528]

# NATIONAL AIRLINES, INC.; ENFORCE-MENT PROCEEDING

# Notice of Oral Argument

In the matter of contest activities of National Airlines, Inc., enforcement proceeding.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, that oral argument in the above-

entitled proceeding is assigned to be held on December 16, 1959, at 10:00 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., November 19, 1959.

[SEAL]

Francis W. Brown, Chief Examiner.

[F.R. Doc. 59-9937; Filed, Nov. 23, 1959; 8:50 a.m.]

# FEDERAL POWER COMMISSION

[Docket Nos. G-14510, 14511]

# CARTER-JONES DRILLING CO., INC. Notice of Applications and Date of Hearing

NOVEMBER 17, 1959.

In the matters of Carter-Jones Drilling Company, Operator, Docket No. G-14510; Carter-Jones Drilling Company, Inc., Operator, Docket No. G-14511.

Take notice that on February 17, 1958, Carter-Jones Drilling Company, Operator (Carter-Jones), filed in Docket No. G-14510 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas service to Tennessee Gas Transmission Company (Tennessee) from the West Mission Field, Hidalgo County, Texas, covered by a gas sales contract dated June 9, 1956, designated in the files of the Commission as Carter-Jones Drilling Company, Operator, et al., FPC Gas Rate Schedule No. 4. Carter-Jones was authorized to render this service to Tennessee by order issued April 22, 1957, in Docket No. G-10664 (In the Matters of Argo Oil Corporation, et al., Docket Nos. G-10551, et al.)

Concurrently with the above application, Carter-Jones Drilling Company, Inc. (Carter-Jones, Inc.) filed an application in Docket No. G-14511 pursuant to section 7(c) of the Act for authorization to continue the service hereinabove proposed to be abandoned by Carter-Jones, under the terms of the basic contract to which Carter-Jones, Inc. succeeded by assignment dated July 1, 1957, said contract being redesignated in the files of the Commission as Carter-Jones Drilling Company, Inc (Operator), et al., FPC Gas Rate Schedule No. 7.

On August 24, 1959, Carter-Jones, Inc. filed an application pursuant to section 7(b) of the Act for permission to partially abandon service from the acreage involved herein, namely the H.G. Reinbold, et al., Gas Pooled Unit No. 1 and the Edward C. Stuart and wife Lucy E. Stuart lease, stating that the available supply of natural gas in the Reinhold Unit is depleted to the extent that further production is not economically feasible therefrom, and that the Stuart lease has expired by its own terms and production therefrom has ceased. This application for permission to abandon is being treated as a petition to amend the application of February 17, 1958, in

Docket No. G-14511 by deleting therefrom the acreage involved in the Reinhold Unit and the Stuart lease.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 17, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 7, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

Joseph H. Gutride, Secretary.

[F.R. Doc. 59-9906; Filed, Nov. 23, 1959; 8:46 a.m.]

[Docket No. E-6908]

### FLORIDA POWER CORP.

# Notice of Application

NOVEMBER 17, 1959.

Take notice that on November 9, 1959, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Florida Power Corporation ("Applicant"), a corporation organized and existing under the laws of the State of Florida and doing business in said State, with its principal business office at St. Petersburg, Florida, seeking an order authorizing the issuance on or after December 10, 1959 of \$19,000,000 principal amount of unsecured promissory notes payable on or before November 10, 1960, to the banks named below in the amounts set, forth as follows:

Name of bank P	articipation
Morgan Guaranty Trust Company	
of New York	\$6,720,000
The Hanover Bank, New York	
Chemical Bank New York Trust	i
Co., New York	2, 520, 000
The Chase Manhattan Bank, New	
York	1,680,000
Bankers Trust Company, New	•
York	1,680.000

A partnership composed of J. K. Maxwell, H. C. Jones, and W. T. Maxwell.

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	articipation
Irving Trust Company, New York	\$840,000
Morgan Guaranty Trust Com-	
pany of New York: Florida National Bank at St.	
Petersburg	500,000
The First National Bank at Or-	
lando	450, 000
The First National Bank in St.	400,000
PetersburgUnion Trust Company, St.	400,000
Petersburg	400,000
Citizens National Bank of St.	
Petersburg	100,000
First National Bank at Winter Park	100,000
The Commercial Bank at Win-	100,000
ter Park	40,000
Bank of Clearwater	110,000
First National Bank of Clear-	100.000
Water	100,000

The interest rate of the proposed borrowings will be determined at the time each loan is made and will be arranged through the Morgan Guaranty Trust Company of New York which will act as the Company's agent for the line of credit. Applicant will pay interest at a rate not in excess of the current prime rate (presently 5 percent) for similar loans in New York City. The purpose for which the notes are to be issued is to finance temporarily a portion of the current construction program of the Applicant.

Total\_\_\_\_\_\_19,000,000

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 4th day of December 1959, file with the Federal Power Commission; Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

Joseph H. Gutride, Secretary.

[F.R. Doc. 59-9907; Filed, Nov. 23, 1959; 8:47 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13148; FCC 59M-1546]

# BLOOM RADIO (WHLM)

# Order Continuing Hearing

In re application of Harry L. Magee, tr/as Bloom Radio (WHLM), Bloomsburg, Pennsylvania, Docket No. 13148, File No. BP-12002; for construction permit.

The Hearing Examiner having under consideration the petition for continuance of hearing and extension of time for giving notice of witnesses to be called filed in the above-entitled proceeding on November 16, 1959, by Shenandoah Valley Broadcasting, Inc.

It appearing that in view of the showing made in the affirmative case exhibits of applicant utilizing measurements not previously available to petitioner efforts are being undertaken looking toward

withdrawal of petitioner from the proceeding; and

It further appearing that all parties have consented to immediate consideration and grant of the said petition and that good cause for a grant thereof has been shown;

It is ordered, This 17th day of November 1959, that the said petition is granted, the date for giving notice of witnesses to be called for cross-examination on the exhibits exchanged is continued from November 16, 1959, to November 27, 1959, and the hearing herein presently scheduled for November 19, 1959 is continued to November 30, 1959, commencing at 10:00 a.m. in the offices of the Commission at Washington, D.C.

Released: November 18, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-9917; Filed, Nov. 23, 1959; 8:48 a.m.]

[Docket Nos. 12710, 12748; FCC 59M-1540]

# COMMODITY NEWS SERVICES, INC., ET AL.

#### Order Scheduling Hearing

In the matter of Commodity News Services, Inc., Complainant, v. The Western Union Telegraph Company, Defendant, Docket No. 12710; in the matter of the Board of Trade of the City of Chicago, Complainant, v. The Western Union Telegraph Company, Defendant, Docket No. 12748.

It is ordered, This 18th day of November 1959, that Charles J. Frederick will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 13, 1960, in Washington, D.C.

Released: November 18, 1959.

Federal Communications Commission, Mary Jane Morris,

[SEAL]

Secretary. [F.R. Doc. 59–9919; Filed, Nov. '23, 1959; 8:48 a.m.]

[Docket No. 12615 etc.; FCC 59M-1536]

# COOKEVILLE BROADCASTING CO.

# Order Scheduling Prehearing Conference

In re applications of Hamilton Parks, tr/as Cookeville Broadcasting Company, Cookeville, Tennessee, et al., Docket Nos. 12615, 12960, 12962, 12964-12974, 12976-12984, File No. BP-11518; for construction permits.

Pursuant to determinations made in further prehearing conference on November 16, 1959, as shown by the record transcript.

It is ordered, This 17th day of November 1959, that a further prehearing con-

ference shall be convened at 10:00 a.m. on Wednesday, December 16, 1959.

Released: November 17, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-9920; Filed, Nov. 23, 1959; 8:48 a.m.]

[Docket Nos. 12883, 12884; FCC 59-1165]

# DENVER BROADCASTING CO. AND SATELLITE CENTER RADIO CO.

# Memorandum Opinion and Order Amending Issues

In re applications of Clifford W. Paine and William John Hyland, III, d/b as Denver Broadcasting Company, Denver, Colorado, Docket No. 12883, File No. BP-11791; John L. Buchanan, tr/as Satellite Center Radio Company, Arvada, Colorado, Docket No. 12884, File No. BP-12514; for construction permits.

1. The Commission has before it for consideration (1) a petition for revision and enlargement of issues, filed June 26, 1959, by Satellite Center Radio Co.; (2) an opposition to the petition filed/by David M. Segal on August 17, 1959; (3) opposition to the petition, filed September 11, 1959, by Denver Broadcasting Company; (4) answer to petition, filed September 11, by the Commission's Broadcast Bureau; (5) reply to petition and answer, filed September 21, 1959, by Satellite Center Radio Co.; and, (6) other matters of record herein. Insofar as these pleadings relate to the application of David M. Segal, they have become moot by reason of the dismissal of Segal's application and they will to that extent and for that reason be dismissed as moot.

2. Denver Broadcasting Company (Denver), Satellite Center Radio Company (Satellite) and David M. Segal filed mutually exclusive applications for construction permits for new standard broadcast stations located in Denver, Arvada and Boulder, Colorado, respectively. By Order, released June 8, 1959, and published in the Federal Register on June 11, 1959, the applications were designated for hearing in a consolidated proceeding; an engineering issue (areas, populations, availability of primary service), a 307(b) issue between Boulder and Denver-Arvada, and a standard comparative issue were specified.

3. Satellite (Arvada) urges the adoption of a standard 307(b) issue in order to allow a comparison between the communities of Arvada and Denver, Colorado. Satellite states that the designation order does not indicate why the Commission decided to treat Arvada and Denver as a single community, and it contends that such determination was made without the Commission having before it any facts such as might be de-

<sup>&</sup>lt;sup>1</sup>Two other issues pertinent only to the Segal application are now moot.

veloped in the record of a hearing. It is submitted that Arvada is a community distinct from Denver (citing in re Nelson, 17 RR 356, 26 FCC 539 (1959)) with its own city officials, elections, school system, civic organizations, and population in excess of 16,000, and that therefore, the issues should be revised to permit comparisons between said communities, or, at a minimum, "be broad enough to permit the Arvada applicant to establish the facts upon which the Commission can make a finding as to whether or not it is a separate and distinct community for section 307(b) purposes."

4. In opposition, Denver argues that it was apparent to the Commission at the time issues were designated that the proposed facilities were virtually equivalent in character, that Huntington Broadcasting Co., 5 RR 721, 6 RR 569, refutes the criteria for a separate community set forth in Nelson, supra, and that pursuant to the rule of Huntington, supra, Arvada is not a separate community.

5. It is the Commission's view that the question of whether Arvada and Denver constitute a single community or whether they should be treated as separate communities should not be resolved on the basis of factual allegations advanced in interlocutory pleadings. Hence, the issues in this proceeding will be revised to permit a determination of this question.

Accordingly, it is ordered, This 18th day of November 1959, that the Petition to Revise and Enlarge Issues, filed June 26, 1959, by Satellite Center Radio Company is in part dismissed as moot and in all other respects is denied except to the extent herein indicated; and that Issues 4 and 5, respectively, are revised to read as follows:

- 4. To determine whether considerations with respect to 307(b) of the Communications Act of 1934, as amended, are applicable in the above-styled proceedings, and, if so, whether a choice between the applications herein can be reasonably based thereon and, if so, whether a grant to Denver Broadcasting Company or Satellite Center Radio Company would provide the more fair, efficient and equitable distribution of radio service to the communities involved.
- 5. To determine, in the event that it is concluded that section 307(b) considerations are not applicable, or if applicable that a choice thereunder cannot be made, which of the operations proposed by Denver Broadcasting Company and Satellite Center Radio Company would better serve the public interest in the light of evidence adduced with respect to significant differences between the applicants as to:
- (1) The background and experience of each of the above-named applicants to own and operate its proposed station.
- (2) The proposals of each of the abovenamed applicants with respect to the management and operation of the proposed stations.
- (3) The programming service proposed in each of the above-styled applications.

It is further ordered, That the burden of proving that section 307(b) is applicable or inapplicable is placed on the respective applicants.

Released: November 19, 1959.

FEDERAL COMMUNICATIONS COMMISSION, MARY JANE MORRIS,

[SEAL]

Secretary.

[F.R. Doc. 59-9921; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 12771 etc; FCC 59M-1547]

# GOLDEN GATE CORP. ET AL. Order Continuing Hearing

In re applications of Golden Gate Corporation, Providence, Rhode Island, Docket No. 12771, File No. BP-11945; Lorraine S. Salera, Arthur L. Movsovitz and Edson E. Ford d/b as Bristol County Broadcasting Co., Warren, Rhode Island, Docket No. 12772, File No. BP-11407; Radio Rhode Island, Inc., Providence, Rhode Island, Docket No. 12773, File No. BP-12383; Camden Broadcasting Company, Inc., Providence, Rhode Island, Docket No. 12784, File No. BP-12836; for construction permits for new standard broadcast stations.

The Hearing Examiner having under consideration a joint request of the parties for a continuance of the hearing now set for November 18, 1959;

It appearing that counsel for the Broadcast Bureau has no objection to a continuance, that all parties consent to a waiver of the four-day rule, and good cause has been shown:

It is ordered, This 18th day of November 1959, that the request is granted and the hearing is continued from November 18 to December 16, 1959.

Released: November 18, 1959.

FEDERAL COMMUNICATIONS COMMISSION.

[SEAL]

MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-9923; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket Nos. 13197, 13198; FCC 59M-1537]

# LAWRENCE W. FELT AND INTERNA-TIONAL GOOD MUSIC, INC.

# Statement and Order After Prehearing Conference

In re applications of Lawrence W. Felt, Carlsbad, California, Docket No. 13197, File No. BPH-2499; International Good Music, Inc., San Diego, California, Docket No. 13198, File No. BPH-2695; for construction permits.

A prehearing conference, attended by counsel for applicants and the Broadcast Bureau, was held today.

It is ordered, This 17th day of Novemher 1959:

(1) The hearing, now scheduled for December 7, 1959, is continued to December 17, 1959, at 10:00 a.m., in the offices of the Commission, Washington,

(2) The affirmative direct cases under Issue No. 1 shall be in written form. Whether the affirmative direct cases under Issue No. 2 shall be in writing is dependent on the intention of applicant Felt, counsel for applicant International having expressed a preference for a written case but an unwillingness to proceed in writing unless both applicants do so. Accordingly, counsel for Felt shall notify counsel for International, the Broadcast Bureau, and the Hearing Examiner, by notice to be received on or before November 24, 1959, whether he intends to present his affirmative direct case under Issue No. 2 orally or in writing.

(3) Written cases shall be exchanged by December 9, 1959. All proposed exhibits, whether or not in connection with a written case, shall be furnished by the same date. Service shall be made upon counsel for the parties and the Hearing

Examiner.

(4) Notice of the witnesses desired for cross-examination shall be given so that it is received by counsel and the Hearing Examiner no later than December 14, 1959.

Released: November 18, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS.

Secretary.

[F.R. Doc. 59-9922; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 13203 etc.; FCC 59M-1553]

# H AND R ELECTRONICS, INC., ET AL. Order Setting Prehearing Conference

In re applications of H and R Electronics, Inc., Greenville, North Carolina, Docket No. 13203, File No. BP-11635; Francis M. Fitzgerald, Greensboro, North Carolina, Docket No. 13205, File No. BP→ 12566; Wilbur B. Reisenweaver, tr/as Reisenweaver-Communications. Winston-Salem, North Carolina, Docket No. 13206, File No. BP-12641; North Carolina Electronics, Inc., Raleigh, North Carolina, Docket No. 13207, File No. BP-12769; James Poston and Frank P. Larson, Jr., d/b as Poston-Larson Broadcasting Company, Graham, North Carolina, Docket No. 13208, File No. BP-13094; Wyti, Incorporated, Vinton, Vir-Docket No. 13209, File ginia, No. BP-13117; for construction permits.

It is ordered, This 18th day of November 1959, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of § 1.111 of the Commission's Rules, at the offices of the Commission in Washington, D.C., at 10 a.m., December 10, 1959, for the purpose of considering, but not limited to, the following matters:

(1) The necessity or desirability of simplification, clarification, amplification, or limitation of the issues;

(2) The possibility of stipulating with respect to facts:

(3) The procedure at the hearing; (4) The limitation of the number of witnesses; and

(5) Such other matters as will be conducive to an expeditious conduct of the hearing.

Released: November 19, 1959.

FEDERAL COMMUNICATIONS COMMISSION, MARY JANE MORRIS.

[SEAL]

Mary Jane Morris, Secretary.

[F.R. Doc. 59-9924; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 12908; FCC 59M-1508]

# LAIRD BROADCASTING CO., INC. Order Continuing Hearing

In re application of Laird Broadcasting Company, Inc., Cedar Rapids, Iowa, Docket No. 12908, File No. BP-11855; for construction permit.

The Hearing Examiner having under consideration the petition for continuance of hearing filed November 4, 1959, by Laird Broadcasting Company, Inc.;

It appearing that all parties have consented to immediate consideration and grant of the said petition and good cause for a grant thereof has been shown in that additional time is sought to permit engineering studies and negotiations looking toward dismissal of the protest;

It is ordered, This 10th day of November 1959 that the said petition is granted and the hearing presently scheduled to commence on November 18, 1959, is continued to January 11, 1960.

Released: November 12, 1959.

[SEAL]

FEDERAL COMMUNICATIONS
COMMISSION,
MARY JANE MORRIS,

Secretary. [F.R. Doc. 59–9925; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket Nos. 13266-13270; FCC 59M-1541]

# MONTANA-IDAHO MICROWAVE, INC., ET AL.

# Order Scheduling Hearing

In re applications of Montana-Idaho Microwave, Inc., Bozeman, Montana, for construction permit for new fixed radio station near Pocatello, Idaho, Docket, No. 13266, File No. 413-C1-P-60/922-C1-MP-60, Call Sign KPJ33; for construction permit for new fixed radio station near Monida Pass, Idaho, Docket No. 13267, File No. 414-C1-P-60/923-C1-MP-60, Call Sign KPJ34; for construction permit for new fixed radio station near Armstead, Montana, Docket No. 13268, File No. 415-C1-P-60/924-C1-MP-60, Call Sign KPJ35; for construction permit for new fixed radio station near Whitehall, Montana, Docket No. 13269, File No. 416-C1-P-60/925-C1-MP-60, Call Sign KPJ36; for construction permit for new fixed radio station near Bozeman Pass, Montana, Docket No. 13270, File No. 417-C1-P-60/926-C1-MP-60, Call Sign KPJ37.

It is ordered, This 18th day of November 1959, that Forest L. McClenning

will preside at the hearing in the aboveentitled proceeding which is hereby scheduled to commence on December 22, 1959, in Washington, D.C.

Released: November 18, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS, Secretar

Secretary.

[F.R. Doc. 59-9927; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket Nos. 12919, 12920; FCC 59M-1552]

# ROBERT L. LIPPERT AND MID-AMER-ICA BROADCASTERS, INC. (KOBY)

# Order Scheduling Hearing

In re applications of Robert L. Lippert, Fresno, California, Docket No. 12919, File No. BP-10345; Mid-America Broadcasters, Inc. (KOBY), San Francisco, California, Docket No. 12920, File No. BP-12744; for construction permits for standard broadcast stations.

Pursuant to agreement at today's prehearing conference: It is ordered, This 18th day of November 1959, that the hearing for the reception of evidence is scheduled for March 1, 1960, at 10:00 a.m., in the offices of the Commission, Washington, D.C. (Other pertinent dates will appear in the transcript of the conference.)

Released: November 19, 1959.

FEDERAL COMMUNICATIONS
COMMISSION.

[SEAL] MARY JANE MORRIS,

Secretary.

[F.R. Doc. 59-9926; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket Nos. 11836, 11837; FCC 59M-1538]

# PLAINVIEW RADIO AND STAR OF THE PLAINS BROADCASTING CO.

# Order Scheduling Hearing

In re applications of Earl S. Walden, Homer T. Goodwin, and Leroy Durham, d/b as Plainview Radio, Plainview, Texas, Docket No. 11836, File No. BP-10200; Troyce H. Harrell and Kermit S. Ashby, d/b as Star of The Plains Broadcasting Co., Slaton, Texas, Docket No. 11837, File No. BP-10499; for construction permits.

A prehearing conference having been held in the above-entitled matter on November 17, 1959, and it appearing from the record made therein that certain agreements were reached which properly should be formalized in an order;

It is ordered, This 17th day of November 1959 that:

(1) All exhibits constituting part of the direct cases shall be exchanged by the parties on December 15, 1959, and copies thereof supplied the Commission's Broadcast Bureau and the Hearing Examiner;

(2) Notification of witnesses to be called for cross-examination shall be given on or before December 22, 1959;

It is further ordered, That hearing herein is scheduled to commence on

December 28, 1959, in the offices of the Commission, at Washington, D.C., at 10:00 a.m.

. Released: November 18, 1959.

FEDERAL COMMUNICATIONS
COMMISSION.

[SEAL] MARY JANE MORRIS,

Secretary.

[F.R. Doc. 59-9928; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 13162 etc., FCC 59M-1556]

# RADIO MUSCLE SHOALS, INC. (WOWL) ET AL.

# Order Setting Prehearing Conference

In re applications of Radio Muscle Shoals, Inc. (WOWL), Florence, Alabama, Docket No. 13162, File No. BP-12150; Union City Broadcasting Co., Inc. (WENK), Union City, Tennessee, Docket No. 13163, File No. BP-12218; The Corinth Broadcasting Company, Inc. (WCMA) Corinth, Mississippi, Docket No. 13164, File No. BP-12269; Alan G. Patteson, Jr. & Matthew Carter Patteson, d/b as Patteson Brothers (KBTM) Jonesboro, Arkansas, Docket No. 13165, File No. BP-12358; Capitol Broadcasting Company (WKDA), Nashville, Tennessee, Docket No. 13166, File No. BP-12518; John R. Crowder, James Porter Clark and James W. Tate, d/b as Fayetteville Broadcasting Company (WEKR), Fayetteville, Tennessee, Docket No. 13167, File No. BP-12777; Walker County Broadcasting Company, Inc. (WARF), Jasper, Alabama, Docket No. 13169, File No. BP-13101; for construction permits.

It is ordered, This 18th day of November 1959, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of \$1.111 of the Commission's rules, at the offices of the Commission in Washington, D.C., at 10 a.m., December 3, 1959, for the purpose of considering, but not limited to, the following matters:

(1) The necessity or desirability of simplification, clarification, amplification, or limitation of the issues;

(2) The possibility of stipulating with respect to facts;

(3) The procedure at the hearing;(4) The limitation of the number of witnesses; and

(5) Such other matters as will be conducive to an expeditious conduct of the hearing.

Released: November 19, 1959.

FEDERAL COMMUNICATIONS COMMISSION.

[SEAL] MARY JANE MORRIS,

Secretary.

[F.R. Doc. 59-9929; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 12593; FCC 59M-1534]

# SOUTH COUNTY BROADCASTING CO.

# Order Scheduling Hearing

In re application of Jack C. Salera, tr/as South County Broadcasting Com-

pany, Wickford, Rhode Island, Docket No. 12593, File No. BP-11383; for construction permit.

On the Examiner's own motion: It is ordered, This 16th day of November 1959, that hearing in the above-entitled matter presently continued without date, is hereby scheduled to be held on November 24, 1959, at 2:00 p.m., in the offices of the Commission, Washington, D.C.

Released: November 17, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

MARY JANE MORRIS, [SEAL] Secretary.

[F.R. Doc. 59-9930; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 13252; FCC 59M-1539]

# TRI-STATE BROADCASTING CO. (WGTA)

# Order Scheduling Prehearing Conference

In re application of Tri-State Broadcasting Company (WGTA), Summerville, Georgia, Docket No. 13252, File No. BP-12296; for construction permit.

The Hearing Examiner having under consideration the above-entitled proceeding:

It is ordered, This 17th day of November 1959, that all parties, or their attorneys, who desire to participate in the proceeding, are directed to appear for a prehearing conference, pursuant to the provisions of § 1.111 of the Commission's rules, at the Commission's offices in Washington, D.C., at 2:00 p.m., December 2, 1959.

Released: November 18, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-9931; Filed, Nov. 23, 1959; 8:49 a.m.]

[Docket No. 13265; FCC 59M-1542]

# EARL A. WILLIAMS

# Order Scheduling Hearing

In the matter of application of Earl A. Williams, Docket No. 13265, File No. 2731-C2-P-59, Call Sign KEC929; for construction permit to establish a new one-way signaling common carrier station in the Domestic Public Land Mobile Radio Service in Syracuse, New York.

It is ordered, This 18th day of November 1959, that Herbert Sharfman will preside at the hearing in the aboveentitled proceeding which is hereby scheduled to commence on December 29, 1959, in Washington, D.C.

Released: November 18, 1959.

- FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

MARY JANE MORRIS. Secretary.

[F.R. Doc. 59-9932; Filed, Nov. 23, 1959; 8:50 a.m.]

No. 229---

[Docket Nos. 13262, 13263; FCC 59M-1550]

# JAMES J. WILLIAMS AND CHARLES E. SPRINGER

# Order Scheduling Hearing

In re applications of James J. Williams, Williamsburg, Virginia, Docket No. 13262, File No. BP-11148; Charles E. Springer, Highland Springs, Virginia, Docket No. 13263, File No. BP-13122; for standard broadcast construction permits.

It is ordered, This 18th day of November 1959, that Annie Neal Huntting will preside at the hearing in the aboveentitled proceeding which is hereby scheduled to commence on January 11, 1960, in Washington, D.C.

Released: November 19, 1959.

FEDERAL COMMUNICATIONS COMMISSION.

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-9933; Filed, Nov. 23, 1959; 8:50 a.m.]

[Docket No. 12856; FCC 59M-1531]

# WSAZ, INC., AND AMERICAN TELE-PHONE AND TELEGRAPH CO.

## Order on Procedural Dates

In the matter of WSAZ, Incorporated, Complainant v. American Telephone and Telegraph Company, Long Lines Department, Defendant; Docket No. 12856.

Following today's prehearing conference: It is ordered, This 16th day of November 1959, that the hearing now scheduled for December 29, 1959, is continued pending the setting of a new date, and that a further prehearing conference is scheduled for March 15, 1960, at 10:00 a.m., in the offices of the Commission, Washington, D.C.

Released: November 17, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

MARY JANE MORRIS Secretary.

[F.R. Doc. 59-9934; Filed, Nov. 23, 1959; 8:50 a.m.1

# DEPARTMENT OF JUSTICE

# Office of Alien Property ROSA BARMAT ET AL.

# Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended (50 U.S.C. App. 32(f)), notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following amounts now in the Treasury of the United States, subject to any increase or decrease resulting from the administration thereof prior to return and after adequate provision for taxes and conservatory expenses:

#### Claimant, Address, and Amount

••••••••••••••••••••••••••••••••••••••
Rosa Barmat; Amsterdam, The Neth-
erlands
Helena Piechowicz; Rome, Italy 20.54
Louis Julius de Winter; Middle VII-
lage, New York 20.54 Rudolph de Winter; New York, New
Rudolph de Winter; New York, New
York 20.54 Susan Lisalotte Posen; Great Neck,
Susan Lisalotte Posen; Great Neck,
L.I., New York 20. 54
Anna Polak; Amsterdam, The Nether-
lands 2.94
Helena Meyers; Arnhem, The Nether-
lands 105.65
Jacob Heimans; Arnhem, The Neth-
erlands 105. 65
Jacob van der Sluis; Oss, The Neth-
erlands 105.65 Helena Lobstein; Hilversum, The
Helena Lobstein; Hilversum, The
Netherlands 52.82
Anna van der Horst; Wageningen, The Netherlands
The Netherlands 52.82
Helene Emmy Vles; Utrecht, The Netherlands Netherlands Netherlands Netherlands Netherlands
Ida Amalia van Leeuwen; Harlem,
The Netherlands 88.04
Philip van Leeuwen; Forest Hills,
L.I. New York 29.35
L.I., New York 29.35 Isidore van Leeuwen; Naarden, The
Netherlands 29.35
Maurits van Leeuwen; Vinkeveen,
The Netherlands 29.35
Mietje Gruys; Naarden, The Nether-
lands 29.35
lands 29.35 Polly Josephine Meurer; Lucerne,
Jenny van Gogh: Wageningen, The
Jenny van Gogh; Wageningen, The Netherlands 29.35
Josephine Henriette Schelvis; Hilyer-
sum, The Netherlands 58.69
Sientje Cohensius; Amsterdam, The
Netherlands 58.69
Gerrit Cohensius; Amsterdam, The
Netherlands 58.69
Chana Frank: Nezer-Sireni, Israel 105. 65
Shimshon Gafni; Kirjath-Haim, Is-
rael 105. 65
Claim No. 62002. Vesting Order No. 17838.
Executed at Washington, D.C., on No-
vember 17, 1959.
For the Attorney General.
DATE V MERON

PAUL V. MYRON, Deputy Director, Office of Alien Property.

[F.R. Doc. 59-9912; Filed, Nov. 23, 1959; 8:47 a.m.]

# DEPARTMENT OF AGRICULTURE

# Agricultural Marketing Service MOLINE AUCTION CO. ET AL. **Proposed Posting of Stockyards**

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Moline Auction Co., Moline, Kans. Howell Livestock Auction, Howell, Mich. Eighty Four Auction Sales, Inc., Eighty

Four, Pa. Greenville Livestock Market, Inc., Green-

ville, Pa. Lycoming Livestock Market, Inc., Williams-

port, Pa Middleburg Auction Sales, Inc., Middleburg,

Pa. The Farmer's Tri County Auction, Inc., Scenery Hill, Pa.

**NOTICES** 

Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the Federal

Done at Washington, D.C., this 18th day of November 1959.

JOHN C. PIERCE,
Acting Director,
Livestock Division,
Agricultural Marketing Service.

[F.R. Doc. 59-9910; Filed, Nov. 23, 1959; 8:47 a.m.]

# CUMULATIVE CODIFICATION GUIDE-NOVEMBER

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during November. Proposed rules, as opposed to final actions, are identified as such.

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361 9071	1004—1005 9047	600
364 9327	1008—1009 9047	9305, 9306, 9330, 9365, 9366, 9419
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Washington, Tuesday, November 24, 1959

# DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service
I 7 CFR Part 1027 I

[Docket No. AO-312]

# MILK IN UPPER CHESAPEAKE BAY, MARYLAND, MARKETING AREA

# Decision on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Baltimore, Maryland, on February 2–13 and March 9–13, 1959, pursuant to notice thereof issued on January 14, 1959 (24 F.R. 428), upon a proposed marketing agreement and order regulating the handling of milk in the Upper Chesapeake Bay marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on September 17, 1959 (24 F.R. 7530), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto.

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

- 3. If an order is issued, what its provisions should be with respect to:
  - (a) The scope of regulation;
- (b) The classification and allocation of milk;
- (c) The determination and level of class prices;
- (d) The distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and conclusions. Upon the evidence adduced at the hearing and the record thereof, it is hereby found and concluded that:

Character of commerce. The handling of milk in the Upper Chesapeake Bay marketing area (concluded to be a more appropriate name for the marketing area than the name "Baltimore" proposed) is in the current of interstate commerce and directly burdens, obstructs, or affects interstate commerce in the handling of milk and its products.

The production area for the proposed marketing area is largely coextensive with that for the Washington, D.C., market and overlaps that for the Philadelphia, Pennsylvania, New York-New Jersey, and Wilmington, Delaware Federal order markets as well as that for a number of local Pennsylvania markets. Of the 2,457 farms holding permits to supply milk for the city of Baltimore in the month of December 1958, 143 were located outside the State of Maryland. Fifty-three of these farms were in the Commonwealth of Pennsylvania, 66 in the State of West Virginia, 23 in the State of Virginia and one in the State of Delaware.

Dealers operating in the local market receive large quantities of fluid cream and condensed milk from plants located outside the State of Maryland. As of December 1958, 41 out-of-State plants held current permits to ship milk or milk products into the State of Maryland.

It is not possible to determine from the record the specific products which are moved from each of such plants. However, it is apparent that the permits are not restricted. While the principal product has been fluid cream, shipments of whole milk and other products have been made. In addition sour cream, cottage cheese, ice cream and ice cream mixes are regularly disposed of in the local market from out-of-State plants.

Several of the larger dealers doing the principal part of their business in the proposed marketing area operate retail routes extending into the State of Pennsylvania where they regularly compete with dealers whose plants are located in Pennsylvania. A number of Pennsylvania dealers with plants located in Lancaster or York Counties, some of

whom receive milk from both Pennsylvania and Maryland farms, operate retail and wholesale routes in the proposed marketing area in direct competition with local Maryland dealers and dealers whose plants are located in the city of Baltimore. In other parts of the proposed marketing area, handlers regu-lated under the Wilmington, Delaware, order purchase milk from both Delaware and Maryland dairy farmers and operate routes in competition with local Maryland and Baltimore City dealers. Baltimore City dealers also distribute milk in other parts of the Eastern Shore portion of the proposed marketing area, directly or through subdealers, on routes in competition with local Maryland dealers and dealers whose plants are located in the southern portion of the State of Delaware. Baltimore City dealers distribute milk in parts of the proposed marketing area and outside of the proposed marketing area in direct competition with handlers regulated under the Washington, D.C., marketing order.

From time to time, contract sales to Government installations in the proposed marketing area are made from Pennsylvania and New Jersey plants. Baltimore and local Maryland dealers regularly compete with out-of-State dealers in bidding to supply such outlets. During 1958 one Baltimore dealer disposed of more than four million pounds of fluid milk under contract to the Dover Air Force Base at Dover, Delaware.

The Maryland Cooperative Milk Producers, Inc., representing the majority of dairy farmers supplying Baltimore City dealers, moves its members' milk from plant to plant as needed. Milk not needed for local fluid consumption is disposed of to out-of-State points, particularly in New Jersey, for fluid disposition or is moved to local plants for manufacturing uses. Products processed at such plants are disposed of on the national market in direct competition with similar products from all parts of the country.

From the foregoing it is concluded that the handling of all milk in the proposed marketing area is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and its products.

Need for an order. Marketing conditions in the Upper Chesapeake Bay marketing area justify the issuance of a marketing agreement and order.

The Maryland Cooperative Milk-Producers, Inc., has been in existence since 1918 and represents a majority of the dairy farmers regularly supplying the market. The cooperative markets milk on a classified use basis, pools the proceeds therefrom and returns a blend price to its member producers.

During World War II and the immediate postwar years the milk supplied by dairy farmers in the local milkshed was insufficient to meet the fluid needs of the market. This condition generally persisted until 1953. Through 1949 the Class I price established by the cooperative and the blend price returned to its members were virtually identical with the result that all dealers, whether buying from the cooperative on a classified use basis or from independent producers on a flat price related to the cooperative's blend price, paid about the same price for milk for fluid uses. Since 1949 the spread between the cooperative's Class I price and blend price has substantially widened.

While no handler in the market receives his entire supply of milk through the cooperative, four or five of the ten Baltimore City handlers have regularly purchased a very large proportion of their fluid needs from the cooperative. Other handlers buying primarily from independent producers purchase supplemental milk from the cooperative on a spot basis.

As the spread between the cooperative's Class I price and blend price has increased, handlers who regularly purchase the bulk of their milk through the cooperative have found themselves at a substantial competitive disadvantage with handlers purchasing primarily from independent producers at prices reflecting the cooperative's blend price. In an effort-to reach a more equitable position in relation to the dealers purchasing on a flat price basis, association buyers have attempted to replace their classified purchases with milk purchased from independent producers or from other sources.

In 1954, one Baltimore dealer shifted approximately 120 dairy farmers with an average daily production of about 9,000 gallons from the Washington to the Baltimore market with no significant addition of Class I sales. These dairymen were paid on a flat price basis which, while higher than the cooperative's blend price, did not reflect the full use value of the milk. To the extent that this milk displaced milk previously supplied by the cooperative in Class I use it increased the divergence between the Class I and blend price and placed further pressures on competing handlers to acquire greater volumes of milk for bottling needs at less than classified prices. Several months later an additional 3,000 gallons of milk per day was made available to the market on a flat price basis and dealers began a concerted effort to induce cooperative members to leave the association. The difference between the association's Class I and blend price, which in 1953 averaged \$0.91, increased to \$1.07 in 1955.

On April 1, 1956 a Baltimore dealer contracted for his milk supply with a Greencastle, Pennsylvania, plant operator receiving milk from approximately 200 dairy farmers. The increasing volumes of purchases by Baltimore dealers on a flat price basis from sources other than the cooperative have resulted in substantial loss of Class I sales by the cooperative and hence lower returns to its member producers. Since milk from non-association sources is purchased at prices related to the association blend, a reduction in returns to the cooperative members reflects a reduction in returns to all producers.

In 1956 the association requested a hearing to consider a Federal order for the market. The hearing in this matter was held in the latter part of 1956. Following the hearing and effective February 1957, nine of the ten Baltimore dealers accepted the "Terms of Sale" offered by the association and the association accordingly withdrew its request for an order, anticipating that market stability then could be reestablished without the assistance of a Federal order. As a result of these negotiations the Greencastle, Pennsylvania, supply was withdrawn from the market.

The "Terms of Sale" effected in February 1957, expired in April of 1958 and dealers renewed their efforts to buy independent milk. In September 1958, the largest Baltimore dealer closed his manufacturing plant and initiated a drive for independent producers offering a flat price of 11 cents over the cooperative blend price. -Other dealers also increased their procurement from other than cooperative sources. The buying advantage enjoyed by flat price purchasers has placed the association at an ever-increasing competitive disadvantage in marketing its members' milk on a classified use basis and has substantially increased its percentage of milk disposed of for other than Class I use. By February 1959 almost 30-percent of the fluid sales of the ten Baltimore dealers represented procurement from independent producers as compared to only 12 percent as late as 1950.

In an effort to preserve its established Class I outlets, the Maryland Cooperative Milk Producers, Inc. has priced milk to its buyers at prices calculated to meet the competition from the flat price buyers in their regular trade and the competition from outside dealers on contract business for Government installations. At the time of the hearing at least four different Class I prices were applicable. to the same quality milk. Notwithstanding, the cooperative has not been able to maintain its Class I outlets in the market and as a result an ever-increasing proportion of its milk has been disposed of

for other than fluid uses.

The close interrelationship of the Upper Chesapeake Bay, Washington and Philadelphia milksheds clearly indicates the necessity for price alignment between markets. Any substantial price disparity will result in a loss of producers to the higher priced markets and will seriously jeopardize the maintenance of an adequate milk supply for the Upper Chesapeake Bay market. During the latter

part of 1958, a Philadelphia handler solicited cooperative members and independent producers on this market and producers on the Washington market, all located in the Eastern Shore area, and developed a tank route for Philadelphia. Most of this route was comprised of former Baltimore shippers. Another Philadelphia handler developed a tank route from the Washington-Frederick County Maryland portion of the milkshed.

It is concluded that the issuance of a marketing agreement and order for the Upper Chesapeake Bay marketing area is necessary to re-establish market stability and assure a continuing adequate supply of pure and wholesome milk for the market. Such order will tend to effectuate the declared policy of the Act. The adoption of a classified pricing plan on a marketwide basis, based on audited utilization of handlers will provide a uniform system of pricing milk to all handlers and will insure a fair and equitable return to all producers. Public hearing procedure as required by the Agricultural Marketing Agreement Act will assure full opportunity for representation of all interested parties in presenting information on marketing conditions and participating in the determination of

prices for milk for the marketing area.

Marketing area. The marketing area as herein proposed includes all of the territory in the city of Baltimore, the town of Laurel in Prince Georges County, the counties of Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Harford, Howard, Kent, Queen Annes, Somerset, Talbot, Wicomico and Worcester and the northern portion of Calvert County, all in the State of Maryland, together with all piers, docks and wharves connected therewith and including all territory which is occupied by Government (municipal, State or Federnment (municipal, State or Federal) installations, institutions or other establishments.

The maximum area of regulation as set forth in the proposals contained in the hearing notice included. in addition to the area herein proposed, the northern portion of Frederick County, Camp Ritchie in Washington County, the southern portion of Calvert County and a substantial portion of Prince Georges County.

The area as herein proposed is slightly in excess of 5,500 square miles in size and according to the 1950 census had a total population of more than 1,600,000 including 900,000 within the city limits of Baltimore. Maryland State Planning Commission population estimates forecast a population growth in the area to slightly in excess of 2,000,000 persons in 1960. These figures exclude a very substantial influx of temporary residents to the shore areas during the summer recreation months.

Milk for the marketing area as herein proposed is produced under the applicable health regulations of the city of Baltimore, the State of Maryland or the city of Frederick. Milk produced under inspection of the Baltimore City health department is sold throughout the area since it is acceptable under all of the ap-Milk produced plicable ordinances.

under State or local health inspections, while generally of similar quality, apparently cannot be distributed in the city of Baltimore.

While no route distribution is made within Baltimore City from plants lo-cated outside the city, the entire proposed area outside the city is served generally by Baltimore dealers in competition with local and/or out-of-State dealers. Two of the larger dealers operating within the city also operate routes directly or through subdealers throughout the proposed area. A third Baltimore dealer also distributes throughout the area, from routes originating at his Baltimore plant or from the Salisbury plant of a subsidiary corporation, milk for which is supplied in either packaged or bulk form from his Baltimore bottling plant or his Westminster (Baltimore approved) supply plant. A number ofother Baltimore dealers distribute generally in all except Calvert County and the Eastern Shore counties.

The southern two-thirds of Baltimore County, a highly developed suburban area with a high concentration of population, is the area in which the greatest overlapping of route sales by the several dealers occurs. All ten Baltimore dealers operate routes here in direct competition with three local Baltimore County dealers, one Carroll County dealer and one Pennsylvania multiple plant dealer. Seventy percent of the total population of the county is urban according to the 1950 census.

The southern portion of Harford County, while less urbanized than Baltimore County, is a concentrated area of sales with substantial overlapping of dealers' routes. The area is served by six of the ten Baltimore dealers, two local dealers (one from Baltimore County and the other from Cecil County) and the multiple plant Pennsylvania dealer. Located in this area are the Edgewood Army Chemical Center and the United States Proving Grounds for which Baltimore dealers have been the principal suppliers in recent years. In 1958 they supplied nearly five million pounds of milk to these two installations.

Much of the area beyond the city of Baltimore and its suburbs is essentially rural in character and population density is relatively low. Nevertheless, each segment of the area represents a substantial area of sales for affected handlers.

The town of Laurel and the counties of Howard, Anne Arundel and the northern portion of Calvert, except for minor sales by handlers presently regulated under the Washington, D.C., order and by small local dealers, are served almost exclusively by Baltimore dealers. Situated in Anne Arundel County are the U.S. Coast Guard installation at Curtis Bay, Fort George G. Meade and the U.S. Naval Academy for which Baltimore dealers have been the principal suppliers. Their total sales thereto in 1958 were nearly 11 million pounds.

Baltimore dealers, together with local dealers who would necessarily be regulated by virtue of their extensive sales in southern Baltimore and Harford Counties do the preponderance of business throughout Carroll, Baltimore and Har-

ford Counties. Minor sales are made in parts of Carroll County by regulated Washington handlers and in the extreme northern portion of each of the three counties by various local Pennsylvania dealers. In addition, one large multiple plant dealer in Pennsylvania alternatively serves much of the three-county area from bottling plants located at York, Lancaster and Ephrata, Pennsylvania.

This dealer proposed that the northern portion of each of these three counties be excluded from the marketing area, thereby minimizing, if not eliminating the impact of regulation on all Pennsylvania dealers except his multiple plant operation.

While the suggested exclusion might relieve the impact of regulation on five relatively small dealers, it would also offer opportunity for the multiple plant operator to avoid regulation in whole or in part by virtue of the flexibility of his operation and his ability to switch sales as between plants. Adoption of the proposed exclusion would have very serious impact on two local dealers, one located in the town of Frizzelburg in Carroll County and the other in the town of Port Deposit in Cecil County. These two handlers have substantial sales in northern Carroll and Harford Counties, respectively, and would be placed at a serious competitive disadvantage in competition with unregulated Pennsylvania dealers, as would the several Baltimore handlers who also serve the area.

Located in Cecil County are the U.S. Naval Training Center at Bainbridge and the U.S. Veterans Hospital at Perry Point, which have been principally supplied by Baltimore dealers. In 1958 their sales to these installations totaled more than 2.8 million pounds. The county is otherwise served by one Baltimore dealer, two handlers under the Wilmington, Delaware, order, one local dealer who would otherwise be regulated by virtue of his sales in Harford County, and by the multiple plant Pennsylvania dealer. The county represents the primary area of distribution of the local dealer and its exclusion might well place him at a serious competitive disadvantage with his Pennsylvania competitor who because of his flexibility of operation could continue to serve the area from unregulated plants.

While the eight Eastern Shore counties, as previously stated, are essentially rural in character they nevertheless represent a substantial area of sales by dealers who would be regulated by virtue of their distribution in other parts of the proposed marketing area. More than 60 percent of the total Class I disposition here (estimated to be approximately 2,900,000 pounds monthly) is milk purchased from dairy farmers by Baltimore dealers, 70 percent of which is actually packaged in Baltimore City plants. In excess of 50 percent of the milk distributed here originates from the plants of Baltimore dealers and is distributed directly on routes, largely through subdealers, throughout the area. An additional 10 percent is moved in both packaged and bulk form to the Salisbury plant of a subsidiary corporation of a Baltimore dealer from which plant it is

distributed, along with a smaller volume of milk received there directly from dairy farmers, on routes throughout the eight-county area. Local dealers, excluding the Salisbury dealer, have less than 40 percent of the overall Class I distribution in the area.

The largest local Maryland dealer, excluding the Salisbury dealer, distributes in only four of the eight counties. One Delaware dealer, doing the greater proportion of his overall business in Maryland, has distribution in five of the eight counties. No other local dealer has distribution in more than three of the eight counties.

While opponents of regulation of this area contend that sales through subdealers and the Salisbury plant previously referred to should not be considered in any determination of the extent of business in the Eastern Shore counties by Baltimore dealers, such position is not valid. The manner of distribution is a business decision and each dealer's operations reflect the results of such decision. Baltimore dealers have an established, substantial interest in the entire eight-county area. They are in fact the primary distributors, distributing generally throughout the area. Only in the county of Dorchester is the greater proportion of business done by local handlers and each handler distributing in this county would be subjected to regulation by virtue of his distribution in one or more of the other seven counties. Hence, it is appropriate that the entire eight-county area be included in the marketing area.

The exclusion of the Eastern Shore area would place regulated Baltimore dealers at a serious competitive disadvantage with unregulated local dealers. The great preponderance of dairy farmers in the Eastern Shore area already have their milk priced under either the Philadelphia, Wilmington, New York-New Jersey or Washington, D.C., Federal orders. It can be assumed that local dealers need pay only prices which compare favorably with the blended prices paid producers under their respective orders. Hence, regulated handlers accounting for their milk on a classified use basis would be placed in direct competition with flat price buyers purchasing milk at prices substantially less than the Class I price.

It is intended that sales of fluid milk from piers, docks and wharves and to craft moored thereat be included in the marketing area. It is also intended that the area include all the territory occupied by Government reservations, institutions or other such establishments, whether municipal, State or Federal, if they fall within the limits of the area as defined. The record indicates that in general the quality requirements for milk for such installations are similar to those for milk sold in other parts of the marketing area. These, by location and past performance, represent logical areas of distribution for Baltimore and Maryland dealers who are in substantial competition with one another in the marketing area. Unless they are included, regulated handlers will be placed at a serious competitive disadvantage in competing with unregulated dealers for such sales. The inclusion of these areas will tend to assure uniform and equal minimum prices for milk among handlers.

The marketing area as herein defined comprises a contiguous territory which is generally served by the same handlers. It is in reality a single milk market, all parts of which are regulated by health ordinances generally similar in scope and enforcement, which constitutes a practical unit for the proposed regulation.

Although the southern portion of Calvert County and a substantial portion of Prince Georges County (in addition to the town of Laurel) were proposed for inclusion in the marketing area, these areas are now a part of the Washington, D.C., marketing area regulated under Order No. 2. It cannot be concluded on the basis of this hearing that either of these areas should more appropriately be a-part of this marketing area.

The Deputy Administrator, in his recommended decision concluded that the northern portion of Frederick County and the Camp Ritchie installation in Washington County were not appropriately a part of this marketing area.

Interested parties filed exceptions to the exclusions of this territory from the marketing area, basing their exceptions on the fact that one handler who would be regulated by the inclusion of other counties in the marketing area has approximately 12 percent of his total distribution in northern Frederick County. In addition, two or three Baltimore City dealers also have some distribution in

The record does not provide specific information as to the relative proportion of sales made in this area by regulated handlers under the Washington, D.C., order, unregulated dealers, and by dealers who would be regulated under this order. Nevertheless, dealers who would be regulated under this order are not the primary handlers in northern Frederick County and have not generally supplied the Camp Ritchie installation. It is concluded, therefore, that this area does not represent an appropriate, extension of this marketing area. If regulation there is desired, consideration may be given to the addition of this territory to the Washington marketing area in an appropriate amendment proceeding.

Milk to be priced. The plants which distribute milk in the Upper Chesapeake Bay marketing area dispose of the major portion of their milk receipts for fluid consumption. Milk intended for fluid consumption in the marketing area is required to be produced in compliance with inspection requirements of the duly constituted health authorities having jurisdiction in the area. The minimum class prices of the order should apply to such milk which is regularly received from dairy farmers at plants primarily engaged in the fluid milk business and which pasteurize and bottle milk for fluid distribution on retail or wholesale routes (including routes of vendors) or through plant stores in the marketing area or at plants which are regular and substantial suppliers of milk to such pasteurizing, bottling or distributing plants. This milk may be identified by

providing appropriate definitions of the stantially in excess of 10 percent of their terms: "Pool plant", "Nonpool plant", "Handler", "Dairy farmer", "Dairy farmer for other markets", "Producer", "Producer-handler", "Producer milk", "Other source milk" and "Route".

identify the supplies of milk on which the market regularly and normally depends. However, under the terms of the order herein proposed milk may be disposed of for fluid consumption in the marketing area by and from plants not meeting such criteria. It is necessary, therefore, to establish definitive standards of performance which may be used in determining which plants and what milk constitute the regular sources of supply and therefore become fully subject to regulation. Such standards are set forth in the order and apply uniformly to all plants wherever located. Any plant, regardless of location, may bring itself under regulation by performing in the manner required. Any plant may relieve itself from regulation by no longer operating in a way that brings it within the scope of the order. Under the circumstances, whether a plant will be fully or partially regulated or unregulated is determined by the decision of the plant operator.

As indicated elsewhere in this decision, marketwide pooling of producer returns is considered essential to the stable and orderly functioning of the market. One of the primary problems in setting up a marketwide pool is to establish appropriate standards which accommodate the sharing of Class I sales among those dairy farmers who constitute the regular source of supply for the marketing area. Performance standards, therefore, should be such that any milk plant which has as its major function the supplying of milk for fluid use in the marketing area would participate in the marketwide equalization pool. On the other hand, such standards should be sufficiently flexible to permit intermittent shipment of milk from supply plants not regularly identified with the local market and direct distribution on routes from plants which have only a minor part of their overall fluid business in the area without subjecting such plants to full regulation. Full regulation of such plants is unnecessary to accomplish the purposes of the order and might result in placing such plants at a competitive disadvantage in supplying the unregulated but primary markets with which they are normally associated.

Any plant other than that of a producer-handler, from which Class I milk equal to not less than 50 percent of its receipts of milk direct from dairy farmers is disposed of in the form of Class I milk during the month on routes (including routes operated by vendors) or through plant stores to wholesale or retail outlets and which disposes of not less than 10 percent of such receipts on such routes in the marketing area should be a pool plant subject to full regulation.

All plants presently distributing milk in the marketing area have a Class I utilization substantially in excess of 50 percent of their producer receipts and except for a few fringe area dealers, generally located in Pennsylvania, do sub-

overall Class I business in the marketing

A plant which distributes less than 50 percent of its total receipts from dairy urce milk" and "Route". farmers as Class I milk should not be These definitions are designed to considered as primarily in the fluid milk business and any distributing plant which does less than 10 percent of its total fluid business in the marketing area should not be considered as substantially associated with the local market.

The pool plant definition should also include a plant which has no direct distribution in the marketing area but which moves 50 percent of its receipts from dairy farmers during any month(s) of September through February or 40 percent of such receipts during any month(s) of March through August to another plant(s) which disposes of Class I milk equal to 50 percent or more of its recéipts from dairy farmers and receipts from other plants and which disposes of at least 10 percent of such receipts as Class I milk on routes in the marketing area. Any supply plant which ships 50 percent or more of its milk to a distributing plant for the market during the September-February period of lowest production is clearly associated with the market and functioning as a primary supply source for this market. During the flush production months of March through August, the amounts of milk shipped from supply plants would normally be less than during the short season. At this season, therefore, a 40 percent shipping requirement is deemed appropriate to provide pool plant status for supply plants. The 40 percent provision is applicable, however, only to newly erected plants or in the event a plant ownership change is involved.

All of the supply plants presently associated with the market (except a nearby manufacturing plant, discussed later) ship the bulk of their receipts to the market during the short production months. The milk not needed for fluid use during the flush months is transferred or diverted to nearby manufacturing plants. The pooling of all milk primarily associated with the market can best be accommodated by providing that any supply plant which was a pool plant in each of the months of September through February shall be a pool plant in each of the months of March through August regardless of the quantity then shipped unless the operator thereof elects to withdraw the plant from regulation.

Since the order cannot be made fully effective prior to January 1, 1960, it is desirable that some provision be made to implement the intent of the automatic pooling provision for the months of March through August 1960. It is provided, therefore, that any supply plant for which the handler provides proof that such plant met the 50 percent delivery requirement as described above for each of the months of September 1959 through February 1960, inclusive, will be afforded automatic pool plant status for the period March-through August 1960 without additional delivery requirement.

Subsequent to February 1961, any supply plant which was a nonpool

plant during any of the months of September through February should not be permitted pool plant status in any of the immediately following months of March through August in which it is operated by the same handler, an affiliate of the handler or any person who controls or is controlled by the handler. It would be inappropriate to permit a plant to hold pooling status during the flush months of production if the milk regularly received there is withdrawn from the pool during the short production months (when such milk would be most needed by the local market) to supply outside Class I markets. This provision, however, will permit a handler, who during certain short production months ships the required percentages, to pool his plant(s) in those months in which the standards are met.

It is recognized that the demand for milk from supply plants may vary seasonally and will be greatest during the season of low production. During the months of flush production, supplies of milk received at plants located in or near the marketing area may be sufficient to supply the Class I outlets. In such case it would be more economical to leave the most distant milk in the country for manufacturing and utilize the nearby milk for Class I use. Performance standards under the order should not force milk to be transported to distributing plants during the flush months merely for the purpose of maintaining eligibility for pooling.

To avoid uneconomic movements of milk, provision should be made whereby a plant may maintain pool status throughout the year if it supplies a substantial portion of its producer milk to the market during the normal short production months. The order, however, should not force such a supply plant to pool during the flush if it does not meet the current supply requirements and the operator thereof elects to withdraw his plant from the pool. Except as hereinbefore discussed, the order provisions permit qualification of a supply plant on the basis of the current month's performance. Moreover, a plant which has previously qualified in each of the months of September through February may retain pool status during the March through August period unless application is made to the market administrator to be a nonpool plant during those months.

A multiple plant handler operating in the market proposed that a system of plants including distributing-type and supply-type plants be permitted to qual-Ify for pooling status as a unit. regulation herein proposed provides minimum standards for both types of plants. No difficulty is anticipated in qualifying either bottling plants or any of the regular supply plants under the individual shipment provisions. However, provision for system pooling of supply plants will serve to minimize uneconomic and unnecessary transportation and/or receiving costs which might otherwise be incurred by the handler to assure pooling status for each of his supply plants. Providing an option under which all supply-type plants op-

erated by a handler can be pooled as a unit (system) will promote efficient handling of a multiplant handler's total milk supply.

Plants primarily engaged in manufacturing operations and not meeting the pool plant qualifications herein recommended should not be granted pool status, nor should the order be so drafted that handlers are encouraged to develop a milk supply solely for manufacturing uses.

It is recognized that processing facilities must be available to the market to permit orderly disposition of the necessary market reserve and seasonal surplus resulting from day to day and month to month variations in supply and demand. To the extent that such surpluses exist, handlers with nonpool manufacturing operations need not be encumbered in their ability to process such surpluses through their own facilities. This can be accomplished through appropriate diversion provisions which will permit direct delivery from the farm to such nonpool plants without loss of pool status for the milk involved. However, to protect the integrity of regulation such diversion should be accommodated only to the extent necessary to assure orderly handling of the necessary market surplus. The diversion provisions hereinafter set forth will accomplish this end.

Proponents proposed that automatic pool plant status be granted the Westminster, Maryland, manufacturing plant of a proprietary handler who also operates a Baltimore City bottling and distributing plant. In support of their position they suggested that the status of this plant in the market is unique. They pointed out that handlers in the market have largely adjusted their receiving operations at their bottling plants to accommodate receipt of only bulk-tank milk whereas a large percentage of the producers identified with the market have not yet installed bulk farm tanks.

The proponent cooperative, which represents approximately 75 percent of all the qualified producers supplying the market, has a working arrangement with the operator of the Westminster plant whereby much of its members' can milk is regularly received there for cooling and assembly for movement to bottling plants in bulk. Such milk not needed for fluid use is processed through this plant into nonfluid products. In addition, this plant also is an outlet for much of the seasonal surplus of bulk tank milk in the market.

Under usual circumstances the Westminster plant would not meet the shipping requirements herein provided for supply plants. While the Deputy Administrator recognized that this plant is currently performing an essential function in the marketing of producer milk, he concluded that it would be inappropriate to provide special pooling requirements to assure continuing pool status for this plant. In lieu thereof he proposed that for an initial 18-month period all Baltimore City permittee milk moved to such plant for the account of a cooperative association be treated as though a diversion from a pool plant and that shipments from such plant to any other pool plant, up to the quantity of can milk received there for the account of the cooperative, be treated as producer milk. Such procedure was intended to provide a reasonable time for the market to make appropriate adjustments.

A number of exceptions were filed to these conclusions. Exceptors contended that the procedure provided was discriminatory to the plant in question which historically has been and is an integral part of the market structure. They further pointed out that adoption of the Deputy Administrator's recommendation in this regard would force producers to install bulk farm tanks within the 18month period prescribed or leave the market, and in the same time period, the closing of the Westminster plant. In addition it was contended that the procedure recommended, did not recognize the balancing function performed by this plant for dealers outside the city of Baltimore.

It is concluded that the Westminster plant in question is now performing an essential function as a balancing plant and in the movement of milk from producer farms to bottling and distributing plants. It is further concluded that the function performed justifies pooling status for this plant. Appropriate safeguards must be provided, however, to assure that this plant, or any similar operation not meeting the regular shipping requirements, does not add dairy farmers or associate with the market solely for the purpose of participating in the equalization pool to the detriment of regular producers on the market.

Virtually all of the milk received at this plant direct from dairy farmers is from Baltimore permittee can shippers who are members of the principal cooperative operating in the market and the milk is received there for assembly and tank movement to bottling plants or as seasonal surplus for processing into nonfluid products. Pooling status can be assured for this plant and for any similar plant by providing pooling status for any manufacturing plant located in the marketing area in any month in which milk is moved in the form of any fluid milk product to other pool plants qualified pursuant to § 1027.3(b) (1); if, during such month at least 90 percent of its receipts direct from dairy farmers are from Baltimore City permit holders who are members of a cooperative association, at least 70 percent of whose members are producers whose milk is received during the month at other pool plants. This requirement reflects the situation which has existed at this plant and at the same time it will permit the plant to continue as a balancing plant both for Baltimore handlers and local handlers with Maryland health approval.

The Upper Chesapeake Bay area is adjacent to several other Federal order markets. Hence it is possible that milk may be distributed in the marketing area from plants which are fully subject to the classification and pricing provisions of other Federal milk marketing orders. To extend application of this order to plants doing the primary portion of their business in another marketing area would result in unnecessary duplication of regulation. The order proposed

herein provides that a distributing plant which would otherwise be subject to the classification and pricing provisions of another order and which disposes of a greater volume of Class I milk in such other area than in this marketing area shall not be subject to regulation under this order. Any supply plant which disposes of a greater volume of milk in another marketing area and which would be subject to the classification and pricing provisions of the other order also should be exempted from regulation under this order. This condition should not be applicable during the months of March through August, however, if such plant had been a supply plant under this order in each of the preceding months of September through February unless the plant operator elects to withdraw his plant from regulation under this

Plants subject to the classification and pricing provisions of another order but making route sales in this marketing area or sales to pool plants under this order should be required to report their receipts and utilization to the market administrator so that their continued status with respect to this order can be determined.

A "handler" should be defined as any person in his capacity as the operator of a pool plant, or any nonpool plant from which Class I disposition is made on routes in the marketing area, and, any cooperative association with respect to the milk of any producer which it causes to be diverted to a nonpool plant for the account of such association. In addition the definition should include the operator of any nonpool plant from which shipments of milk are made to pool plants qualified on the basis of route distribution.

Inclusion in the handler definition of the operator of nonpool plants with direct Class I disposition in the marketing area (including a producer-handler) or supplying milk to pool plants distributing milk in the marketing area is necessary in order that the market administrator may require reports as he deems necessary to determine the continuing status of such individual. In the case of a distributing plant which does not acquire pool status because of insufficient sales in the marketing area, such reports are necessary to determine the amount payable by the operator of such plant on the milk distributed in the marketing

The handler definition should be sufficiently broad so as to include a cooperative association with respect to producer milk diverted to a nonpool plant for the account of such association. This arrangement will permit the cooperative association to divert milk for Class I use which might otherwise be used or disposed of by the proprietary handler in Class II and thus will promote efficient utilization of producer milk in the highest available use class.

The term "dairy farmer" should include any person who produces milk which is delivered in bulk to a plant. The term "dairy farmer for other markets" as herein proposed is intended to designate those dairy farmers whose milk production is primarily associated

with other markets and who should not be accorded pooling status along with regular producers for this market.

Under usual circumstances this market has an adequate milk supply. Any needed supplemental supplies would most likely be required during the shortproduction months. This is also the period when milk would be in greatest demand in other surrounding fluid markets which represent alternative outlets for milk produced by local dairy farmers. Under the marketwide pooling herein provided, any dairy farmer or group of farmers with an alternative outlet during the short season might find it advantageous to leave the local market during those months when milk is in greatest demand and seek to return during the flush-production months when the outside market was no longer available. While it is not intended that Federal regulation should preserve a market for any particular qualified producers to the exclusion of other qualified dairy farmers, the regulation should not provide a means whereby certain dairy farmers are accorded Class I outlets outside of regulated markets but dispose of their surplus in the pool. Under the terms of the order as hereinafter set forth a dairy farmer delivering milk to a pool plant during the months of March through August, who during the preceding months of September through February delivered his milk to a nonpool plant operated by the same handler, or an affiliate thereof, would be considered a dairy farmer for other markets during the months of March through August. However, this provision should not apply during the initial period from the effective date of the order through August 1960, since no dairy farmer had producer status for the period September 1959 to the effective date of the order.

The term "producer" should be defined to mean any person other than a producer-handler or a dairy farmer for other markets, who produces milk which is eligible for consumption as fluid milk in the area and which milk is received at a pool plant.

The definition should be broad enough to include a dairy farmer whose milk is ordinarily so received but is diverted by a handler to a nonpool plant for his account on not more than 8 days (4 days in the case of every-other-day delivery) during any month of September through February and at any time during the months of March through August. In order that milk which is so diverted will continue to be included in the regular pool computations, it should be treated as if received at the pool plant from which it was diverted.

As previously indicated, it is intended that the order shall assure an adequate but not an excessive, supply of milk for the fluid market. The order provisions should not be drawn so as to encourage an excess volume of milk to associate with the pool. During the months of September through February it is not necessary to accommodate diversions to nonpool plants except insofar as may be necessary to assure orderly handling of the weekend surpluses which accrue because plant bottling operations may be suspended during weekends.

The months of March through August are the months of greatest production during which unlimited diversion privileges are desirable in order to expedite the orderly disposition of the necessary surplus

surplus.

Milk disposed of to Government installations under contract sales is required to meet specified standards patterned after the U.S. Public Health standards which are similar to those in effect in other parts of the area. It is intended that dairy farmers whose milk is received at a plant supplying contracts for Government installations in the marketing area shall be considered as qualified producers in any month when their milk is so disposed of, if the plant at which their milk is first received is a fully regulated pool plant during such month.

The term "producer milk" is intended to include all skim milk and butterfat contained in milk produced by producers and received at pool plants directly from such producers. The term also includes any diverted milk of producers which for purposes of this regulation is considered as a receipt at pool plants from which diverted.

A "producer-handler" should be defined as any person who operates a dairy farm and a plant from which Class I milk is disposed of in the marketing area and who received no other source milk or milk from other dairy farmers.

There are few producer-handler operations in the area and there is no indication that they have been a disturbing factor in the market. A producer-handler conducts an integrated operation—processing, bottling, and distributing only his own farm production. Full regulation of such individuals would provide considerable administrative difficulty and is not considered necessary under the existing market situation.

Exceptors pointed out that the order as recommended by the Deputy Administrator would not permit the cooperative association to sell milk directly to producer-handlers and that modification in this respect would implement more orderly marketing of milk.

Under the terms of the order, as here-inafter set forth, the operator of the plant which receives milk direct from dairy farms is held responsible for accounting for such milk and for payments to producers. Since the cooperative association operates no plant, any milk which it disposes of to a pool plant is treated as a producer receipt at the plant of receipt. Any producer-handler so receiving milk would lose his producer-handler status and become a pool handler.

Producer-handlers are not a substantial factor in this market. In granting producer-handlers the privilege of purchasing supplemental supplies from pool plants it was recognized that under usual circumstances the cost of milk so purchased would be something in excess of the Class I, reflecting handling costs and the spot nature of such purchases. Hence, producer-handlers would normally tailor their own production, insofar as possible, to their Class I needs. It is not intended that a handler with own-farm production who is permitted

an exemption from pooling should be able to procure his requirements in excess of own-farm production directly from dairy farmers and still avoid the pooling requirement merely because the milk is purchased through the marketing agent of the producers. Further, unless milk disposed of by the cooperative to a producer-handler is treated as a producer receipt, the minimum class prices under the order cannot be effectively enforced for such milk.

It was proposed at the hearing that a specific volume limitation be placed on producer-handlers and any such operation exceeding such limitation be sub-

jected to full regulation.

A requirement that such a business be the personal risk and the personal enterprise of the person involved, together with the rules for classification and assignment of transfers to and from producer-handlers, hereinafter set forth, should tend to prevent such operations from becoming disruptive factors in the market. Further restrictions appear unnecessary at this time. However, as previously indicated it is necessary that the plant operator in his status as a handler be required to make reports to. the market administrator in order that his continuing status as a producerhandler can be ascertained and to facilitate accounting with respect to transfers from other handlers.

The term "other source milk" should be defined as all skim milk and butterfat utilized by a handler in his operation except fluid milk products received from pool plants, inventory in the form of fluid milk products and current receipts of producer milk. The term should include all skim milk and butterfat in products other than fluid milk products from any source, including those produced at the handler's plant during the same or an earlier month, which are reprocessed or converted to other products during the month. Other source milk is intended to represent all skim milk and butterfat from sources not subject to the classification and pricing provisions of the attached order. If other source milk is disposed of in Class I products, partial pricing and regulation is provided under compensatory payment provisions. Defining other source milk in this manner will insure uniformity of treatment to all handlers under the allocation and pricing provisions of the order.

The term "route" is defined to distinguish between the various methods of disposition of fluid milk products. This definition is necessary to facilitate the application of other order provisions. The term refers to the method by which fluid milk products are distributed to wholesale and retail customers as distinguished from sales to other plants.

(b) Classification of milk. A classified use plan should be established to insure that all milk and milk products are fully accounted for by the handler who is responsible for accounting and reporting to the market administrator and for making payments to producers. Accounting for milk and milk products on a skim milk and butterfat accounting basis and pricing in accordance with the

form in which, or the purpose for which such skim milk and butterfat are used or disposed of as either Class I milk or Class II milk is the most appropriate means of securing complete accounting on all milk involved in market transactions.

Milk is disposed of in the market in a wide variety of forms, representing different proportions of butterfat and skim milk components of milk which may be greatly changed from the proportions of such butterfat and skim milk in milk as it is first received. Measured in terms of volume the products disposed of in the market may represent one quantity of milk and measured in terms of butterfat content only they may represent a different quantity.

There are obvious difficulties in reconciling the quantities of product to be priced, particularly when consideration is given to the increasing intermarket transfers of milk, where accounting in one area is in terms of product weight and in another area is in terms of milk equivalent of butterfat. Uniformity of prices between markets depends upon a complete measure of the milk quantities involved and this must be accomplished in terms of both butterfat and the skim equivalent of solids.

Essentially, market administrators use a skim milk and butterfat accounting approach in their verification procedure regardless of whether or not such a system is spelled out in the orders. The skim milk and butterfat accounting system provided for in the order recognizes the procedure generally used in Federal order markets for verification of the receipts and utilization of milk and milk products and will provide for uniformity in application of the accounting system to all handlers involved.

Only producer milk is intended to be priced under Federal orders; however, milk may be received at pool plants not only from producers but also from other handlers and other sources. Milk from all sources is commingled in the handlers' plants. It is necessary to classify all receipts of milk and milk products in a plant to properly establish the classification of producer milk and to apply the provisions of a classified pricing plan to such milk.

The fluid milk products which are classified in Class I are required by the appropriate health authorities in the marketing area to be made from milk or milk products procured from approved sources. The extra cost incurred by producers in producing quality milk and in getting it delivered to the market in the condition and in the quantities needed by the market necessitates a price for milk used in Class I products somewhat above the price of milk used in manufactured products. This higher price must be at a level which will provide sufficient incentive to producers through the blended price returns to encourage the production of those quantities of milk needed for the Class I products plus the necessary reserve needed for fluctuations in the market

Milk which is excess to Class I use at any time must be disposed of for use in manufactured products. These prod-

ucts are less perishable than fluid milk products and they compete on the national market with similar products made from unapproved milk. Milk so used must be classified as Class II milk and priced according to its value in such outlets.

the proposed classification Under scheme, Class I milk would be all skim (including any used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat disposed of (other than as sterile products in hermetically sealed containers) in fluid form as milk, flavored milk, skim milk, flavored or cultured skim milk, buttermilk, concentrated milk and 50 percent by weight of the product known as "half and half" which has a butterfat content of at least 12 percent but less than 18 percent. Skim milk and butterfat not specifically accounted for in Class II also would be classified in Class I.

All skim milk and butterfat used to produce products other than fluid milk products as set forth above should be Class II. This classification would include all of those products which are generally considered as manufactured milk products not required by the health authorities to be made from milk from approved local sources.

Fluid cream, although generally considered in its physical form to be a fluid milk product, should be classified in Class Practically, the area herein under consideration is an open cream market. Philadelphia, which is an open cream market, is less than 100 miles from Baltimore and is a primary factor in determining the price of cream in the Baltimore market. Health authorities with jurisdiction in the marketing area have approved outside sources for shipment of fluid cream. Such cream competes with cream derived from local producer milk. The inclusion of fluid cream as a Class I product would price cream derived from producer milk at a competitive disadvantage with cream imported from other sources.

Eggnog and milkshake mix also should be classified in Class II. Eggnog is not required to be made from approved milk and the product known locally as milkshake mix competes directly with ice cream mix which is a manufactured milk product not required to be produced from milk approved for fluid use

milk approved for fluid use.
"Half and half" is a mixture of milk and cream or skim milk and cream with a butterfat content adjusted to between 12 percent and 18 percent. Classification of this entire product as Class I might seriously deter the use of local producer butterfat in such product since hotels and restaurants could combine bulk skim milk priced in Class I with cream purchased from unregulated sources and sell a combined product at a price reflecting the lower cost resulting from such mixtures. Accordingly, it is concluded that 50 percent by weight of the quantity of skim milk and butterfat in "half and half" should be classified in Class I and the remaining 50 percent should be classified as Class II.

Handlers maintain inventories of milk and milk products which must be considered in accounting for receipts and utilization. The accounting procedure will be facilitated by providing that endof-month inventories of all Class I products be classified as Class II milk, regardless of whether such products are in bulk or packaged form. Inventories of such products will be subtracted, under the proposed allocation procedure, from any available Class II disposition in the following month. The higher use value of any fluid milk product in inventory but, which is allocated to Class I milk in the following month, should be reflected in returns to producers. Inventories of fluid milk products on hand at a pool plant at the beginning of the month in which the plant is first pooled should be allocated as other source milk received at the plant during the month. The attached order provides for reclassification of inventories on that basis.

Small unavoidable losses of both skim milk and butterfat are usually experienced in operations within a plant. These losses are referred to in the trade "shrinkage". Provision should be made for the classification of shrinkage since handlers must account for all plant receipts on a classified use basis. An allowance of two percent of producer receipts as Class II milk was proposed as a practical, reasonable shrinkage percentage based upon experience in the market. Accordingly, it is concluded that actual shrinkage of producer milk not in excess of two percent of producer receipts should be classified as Class II. Any shrinkage in excess of that quantity should be classified as Class I.

In the determination of shrinkage of producer milk, total shrinkage should first be prorated between receipts of producer milk and receipts of other source milk. None of the shrinkage should be assigned to milk received from other pool plants since shrinkage on such milk is allowed to the transferring handler. All shrinkage of other source milk should be classified as Class II. The classification procedure herein recommended gives adequate protection in the classification of producer milk in this market and it is unnecessary to limit the classification of shrinkage on other source milk in Class II.

The skim milk and butterfat content of milk and milk products received and disposed of by a handler can be determined by recognized testing procedures. Some products, such as ice cream and condensed products, present a more difficult accounting problem in that some of the water present in the milk as received from the farm is removed in processing. In the case of such products, it is necessary that the market administrator ascertain, through the use of adequate plant records or standard conversion factors, the respective amounts of skim milk and butterfat used to produce these products.

The accounting for such products as condensed milk and nonfat dry milk should-be based on the original pounds of skim milk and butterfat required to produce the product. The value of each pound of nonfat dry milk utilized by addition to or as a Class I product has a value to the handler the same as every other pound contained therein, or in similar products derived originally from producer milk. Neither the form in which, nor the

source from which, such solids are obtained alters their value to the handler for such purposes as reconstitution or fortification and they may not be distinguished on the basis of cost of production, need for regular supplies, sanitary requirements, seasonality of production, or value to consumers. The effect of computing the value of the added nonfat solids in actual weight rather than on a skim milk "equivalent" basis is to alter the accounting method for such solids as compared with an equivalent quantity of such solids contained in fluid skim milk from producer milk which is utilized in the same product, in another Class I product, or even in Class II milk. The actual weight basis of accounting for the added solids used in fortified skim milk has the effect, from a pricing standpoint, of retaining in Class II milk a portion of the producer milk utilized in the production of such Class I product even though it represents the only end use resulting from the producer milk involved. This is equivalent to granting the handler a price reduction with respect to a portion of his Class I milk. Therefore, the accounting procedure to be used in the case of this and any milk product condensed from milk should be based on the pounds of skim milk and butterfat required to produce such product.

All skim milk and butterfat received for which the handler cannot establish utilization should be classified as Class I milk except for that shrinkage which may be classified in Class II as previously described herein. This provision is necessary to remove any advantage which might accrue to handlers who fail to maintain complete and accurate records and will assure producers full value for their milk according to use.

From time to time handlers may find it necessary to dump skim milk. Under such circumstances, the market administrator must be provided opportunity to witness the actual dumping, if he deems it necessary, and to otherwise have verifiable evidence to substantiate such reported disposition. Such Class II utilization should be allowed only when the handler during normal business hours has given the market administrator at least three hours advance notice of intention to dump and information regarding the quantity of skim milk involved.

No allowance is made for butterfat dumped even though the skim milk dumped, and for which a Class II classification is provided, is a component of a fluid milk product from which the butterfat has not been removed. Under normal circumstances, the butterfat component of any fluid milk product is salvageable and it is not desirable to permit dumping of butterfat under other than a Class I classification.

Each handler must be held responsible for a complete accounting for all his receipts of skim milk and butterfat. The handler who first receives milk from producers should be responsible for establishing the classification thereof, and for making payments to producers. This principle is fundamental to effective administration of the order and is consistent with the practice followed in federally regulated markets.

As previously indicated classification of skim milk and butterfat used to produce Class II products should be considered to have been established when the product is made. Classification of skim milk and butterfat used to produce fluid milk products should be established when such products are actually disposed of. Classification of such fluid milk products disposed of by transfer to another plant, under certain circumstances, should be determined on the basis of their utilization in the transferee plant.

Skim milk and butterfat in fluid milk products transferred between pool plants, should be classified as Class I unless both handlers indicate in their reports to the market administrator that such classification should be Class II. However, sufficient Class II utilization must be available in the transferee plant to cover any claimed Class II classification after the prior allocation of shrinkage, other source milk, and inventory of Class I products.

Skim milk and butterfat in packaged fluid milk products transferred from a pool plant to a nonpool plant should be classified as Class I and should not be subject to reclassification. Milk so moved is intended for disposition for fluid consumption and the Class I value thereof should logically accrue to producers in the local market supplying such milk.

All skim milk and butterfat in fluid milk products transferred or diverted to the plant of a producer-handler should be classified as Class I and should not be subject to reclassification. Producer-handlers operate essentially only a Class I business. Any supplemental supplies of milk obtained from pool handlers may be presumed to be needed by the producer-handler for fluid use and should be classified in the supplying handler's pool plant as Class I milk.

Skim milk and butterfat disposed of in bulk in the form of any fluid milk product to a nonpool plant (other than the plant of a producer-handler) which has route distribution within the marketing area should be classified as Class I milk to the extent of such plant's disposition of skim milk and butterfat, respectively, as Class I milk in the marketing area. Any remaining amount of such transfer or diversion should be assigned to the highest remaining utilization in the transferee plant after the prior assignment of receipts at such plant from dairy farmers who the market administrator determines constitute its regular source of approved supply for the outside area. This procedure will complement the application of the compensatory payment provisions and will provide the nonpool handlers with Class I sales in the marketing area with the opportunity to choose whether he shall offset such Class I sales with purchases of federally regulated milk, classified and priced as Class I milk, or make compensatory payments to the pool. In either event the pool handlers have assurance that nonpool handlers will not have a price advantage on milk disposed of in the marketing area. It is not intended that pool milk should displace a nonpool handler's regular receipts from dairy

farmers which meet the quality requirements of the health authority having jurisdiction in the area in which his outside sales are made. However, transfers of pool milk to a nonpool distributing plant should take priority assignment in the highest available use class ahead of other receipts of milk at such plant except regular receipts direct from dairy farms approved to supply milk for fluid consumption,

Except as previously discussed skim milk and butterfat disposed of in bulk in the form of any fluid milk product to a nonpool plant either by transfer or diversion should be Class I unless specified conditions are met. If the transferee plant is located 300 miles or less from the City Hall in Baltimore, Maryland, by shortest highway distance the transferring handler should be permitted to claim classification as other than Class I. In such instance the transferee handler must maintain adequate books and records of utilization of all skim milk and butterfat in his plant which are made available to the market administrator, if requested, for verification purposes; and at least an equivalent Class II utilization of skim milk and butterfat, respectively, must have been available in such plant after the assignment of receipts at such plant from other Federal order plants in the class in which assigned under such other order. Provision for verification by the market administrator is reasonable and necessary to assure that producer milk will be paid for in accordance with its utilization. The record shows that there are ample manufacturing facilities within 300 miles of Baltimore to handle any prospective surplus of the market. Unless some limitation is provided on the distance beyond which shipments of fluid milk products are permitted a Class II classification, it would be necessary for the market administrator to follow any such shipments to their destination to determine utilization and classification. Such procedure would of necessity increase the costs of administering the order.

It is appropriate therefore both for administrative convenience and for the conservation of administrative funds to provide automatic classification in Class I for skim milk and butterfat contained in any fluid milk product which is moved more than 300 miles from Baltimore.

The class prices established by the order apply only to producer milk. Accordingly, since a plant may receive skim milk or butterfat from sources other than producer milk a procedure must be established whereby it may be determined what quantities of milk in each plant should be assigned to producer milk. The milk from producers who are regular suppliers of milk for the marketing area should be given priority in the assignment of Class I utilization at pool When milk is received from other sources it should be assigned first to Class II milk. Unless this procedure is followed there can be no assurance that such other source milk would not be used to displace producer milk in Class I when it is advantageous to the purchasing handler. If the order permitted handlers to obtain other source milk for Class I uses whenever it was advantageous to do so while producer milk in the plant was utilized in Class II the order would not be effective in carrying out the purposes of the Act.

Inventory of fluid milk products on hand at the beginning of the month should be subtracted from the next lowest available use classification following allocation of other source milk but prior to the allocation of producer milk. The procedure of allocation and computation of obligations provided will permit final classification of opening inventory in the current month and it is intended that there shall be a reclassification payment on any part of the opening inventory which is allocated to Class I in the current month. An exception to this procedure is provided in the payment provisions of the order to insure that such reclassification payment will not be made applicable to milk which has previously been priced as Class I milk under another Federal order which is carried in the handler's plant in opening inventory.

Following the assignment of unregulated other source milk and beginning inventory of fluid milk products, other source receipts in bulk in the form of fluid milk products received from plants regulated by other orders issued under the Act should be assigned to the lowest remaining available use classification. Under this procedure a handler has assurance that if his producer receipts are inadequate to meet his Class I needs and he purchases regulated milk from another Federal order market such milk will be assigned to Class I. Since it is not intended that there be any compensatory payment on other source mlik which is classified and priced in Class I under another order and which is disposed of for Class I use in this market, this sequence of assignment will tend to minimize the application of the compen-

satory payment provision.

It is intended that the order shall recognize the principle of free movement of packaged fluid milk products between Federal order markets. Accordingly, the assignment provisions provide that receipts of packaged fluid milk products from plants regulated under another Federal order shall be assigned to Class The pricing under the several orders from which such movements of milk might occur is such that no pricing advantage can be gained by the movements of packaged milk between markets. However, efficiencies in scale of operation derived from concentration of specialized packaging operations in a single plant may prove advantageous to multiple plant operations. This unrestricted competition for sale among all handlers whose milk is priced and regulated on a uniform basis will provide greater flexibility in daily operations of handlers and a better balance of milk supplies between markets will be gained by permitting the free movement of such packaged fluid milk products. The Philadelphia, Pennsylvania, Wilmington, Delaware and the New York-New Jersey orders, under certain circumstances, permit the distribution of Class I milk which is not priced under such orders. It is necessary therefore, to provide a compensatory payment on any milk originated from another Federal order plant

which is not priced as Class I under such other order.

The only remaining receipts not yet allocated are producer receipts and receipts from other pool plants. Receipts from other pool plants are deducted from the class in which assigned under the transfer provisions and the remaining utilization is presumed to represent producer receipts.

If after making the various assign= ments of skim milk and butterfat pursuant to the allocation provisions of the order, the total of all Class I and Class II milk assigned to producer milk exceeds the amount of producer milk reported to have been received by the handler for whose pool plants the computation is being made, such "overage" should be assigned first to the available Class II utilization and any remainder to Class I. Such overage should be paid for by the handler at the applicable class prices. In the allocation procedure recognition is taken of all receipts of other source milk reported by the handler. When utilization records indicate a disposition greater than receipts it must be presumed that the handler underreported his receipts of producer milk.

(c) Determination and level of class prices. The fundamental consideration in pricing milk in this market is to establish minimum Class I and Class II prices to producers which will result in adequate but not excessive milk supplies to meet the fluid milk requirements of the market plus a necessary reserve. Moreover, it is essential, to restore and maintain orderly marketing of milk in the area, that these minimum prices be in appropriate relationship with prices in other markets in the region. The production area for the market is largely coextensive with that for the Washington market and overlaps the production areas for the Philadelphia, Pennsylvania, Wilmington, Delaware, and the New York-New Jersey Federal order markets as well as a number of local markets.

Class I price. A basic Class I price of \$5.10 per hundredweight for the months of March through June and \$5.55 per hundredweight for the months of July through February should be established for the Upper Chesapeake Bay market for the first 18 months in which the order is in operation. An adjustment mechanism should be provided which will move such price either upward or downward, as the case may be, to reflect the average movement in the Class I price levels in the Philadelphia, New York-New Jersey and Chicago markets.

The pricing mechanism herein provided as well as the pricing level is identical with that under Order No. 2, regulating the handling of milk in the Washington, D.C., marketing area. The intermarket relationship between Baltimore and Washington requires a close alignment of prices between the two markets.

Class I prices in the Baltimore and Washington markets have been closely related over an extended period of years. Since 1954 the Washington price has tended to exceed the Baltimore price. However, if all of the various subclasses of fluid milk sales in the respective markets (including sales to military installa-

tions, school milk, economy brand milk and special discount milk) are considered, prices in the two markets have

tended to approach equality.

Any analysis of the appropriate Class I price level must consider the cost at which milk may be secured from dependable alternative supply sources. Several Washington area handlers have route distribution in parts of the local marketing area and local handlers operate routes in parts of the Washington marketing area. Several handlers operate plants in both this market and in the Washington market and any significant variation in the Class I price as between the two markets could result in shifts of plants and/or producers from one market to the other.

In recent years, improvements in the handling and transportation of milk have made the Midwestern area a potential source of supply for Northeastern milk markets, including the Upper Chesapeake Bay area. The Chicago milk-shed represents an appropriate area for determining alternative costs because of its dependable reserve supply and its past experience as a supplier of milk to fluid markets throughout the country. Official notice is taken of the Washington, D.C., decision (24 F.R. 3630) in which it was concluded that an annual Class I price level of \$5.40 would provide an appropriate price alignment between that market and Midwestern supply sources. Since both Baltimore and Washington are approximately equidistant from Chicago it is appropriate that the initial Class I price level for this market should be identical with that presently applicable in the Washington market.

Milk prices in fluid milk markets throughout the country normally vary seasonally, being highest in the short production months and lowest in the months of flush production. Under usual circumstances some seasonality of pricing has prevailed in the local market: however, there appears to have been no fixed pattern of seasonality in the price. It is desirable that some seasonality be provided to insure that the cost of alternative supplies during the flush production months will not be sufficiently below the local price to encourage handlers to drop local milk during this period in favor of cheaper supply sources. The months of March through June constitute the period of flush production in this area. Under these circumstances, it is concluded that an appropriate intermarket pricing relationship can be maintained throughout the year if a price of \$5.10 and \$5.55, respectively, is provided for the periods of March through June and July through February.

Notwithstanding the fact that the pricing herein recommended is limited to a period of 18 months, it is essential that some mechanism be provided to assure that the price during such period will reflect the current supply-demand situation in the market and maintain an appropriate relationship with prices in surrounding markets. Lack of marketwide information at this time deters the formulation of a supply-demand adjuster based on local market conditions. Pro-

ponents recommended that in order to assure a continuing appropriate price relationship with the Washington price the identical adjustment mechanism provided in the Washington order should be provided under this order. They pointed out that the production area for the local market overlaps that of Philadelphia and New York-New Jersey as well as Washington and hence the supply-demand adjustment mechanism provided for Washington is equally appropriate here.

It is concluded that an adjustment mechanism based on the average movement in the Philadelphia, New York-New Jersey and Chicago Federal order Class I price (as provided in the Washington order) will produce appropriate changes in the local Class I price which reflect changes on the national market for milk and cost factors affecting the supply and demand for milk and will serve to maintain a reasonable alignment of prices between markets during the interim period of operation under the order.

Class II price. Some milk in excess of Class I requirements is necessary to maintain an adequate supply of milk for the fluid market at all times. This excess milk must be disposed of in manufactured products which would be Class II under the proposed classification system. The price for such milk should be maintained at the maximum level consistent with facilitating its movement to manufacturing outlets when not required for Class I use in the market. The Class II price level should not be at so low a level, however, as to encourage procurement of milk supplies by handlers for the sole purpose of converting such milk into Class II products.

The members of the Maryland Cooperative Milk Producers Association supply at least seventy-five percent of the milk for the local market and the cooperative carries the bulk of the market reserve. Milk not needed for fluid uses is diverted to nearby plants for manufacturing uses. The facilities of the Maryland and Virginia Cooperative Milk Producers at Laurel, Maryland, and the manufacturing plant at Westminster, Maryland, previously referred to, represent the principal outlet for surplus milk. However, other manufacturing facilities are available in the production area. The available facilities are adequate to handle any prospective market surplus.

Proponents proposed that the Class II price be established at a level somewhat below the price established under the Washington order contending that this would promote better price alignment with the Philadelphia and the New York-New Jersey Class II price. They pointed out that the cooperative does not own a manufacturing plant and must move milk to local manufacturing plants for processing at some additional transportation cost.

The available manufacturing facilities are favorably located with respect to the local market and to the production area. Under the diversion provisions herein provided milk can be efficiently moved direct from the farm to such manufac-

turing plant. Since much of the local surplus is processed through the same facilities used to process the neighboring Washington surplus and such facilities are equally accessible to both Baltimore and Washington it would be inappropriate and unnecessary to establish a lower price than provided under the Washington order. It is concluded therefore, that the Class II price under this order should be established by the same formula and at the same level of the Washington Class II price.

The formula as herein proposed would base the butterfat value on the Philadelphia market weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey for each week ending within the month as reported by the United States Department of Agriculture, and would provide a make allowance of \$2.00 per can of cream. In order that butterfat values may not be unduly depressed by local market conditions in the Philadelphia area as reflected in such cream price it is provided that the butterfat value shall not be less than the average Grade A (92-score) butter price at New York as reported by the United States Department of Agriculture for the month less 17 cents. This arrangement will provide assurance to local producers that the Class II price will continuously reflect competitive eastern butterfat values.

The skim milk value under the formula as herein proposed would be based on the average of the Chicago daily market quotations for roller and spray nonfat dry milk as reported by the Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month for which the Class II price is being determined and reflects a make allowance of approximately five and one-half cents per pound of powder. The formula as herein proposed would have yielded an average Class II price of \$3.23 and \$3.02 for the years 1957 and 1958, respectively. The 1958 price would have been eight cents higher than the New York Class III price, and six cents over the Philadelphia Class II price, and appropriately reflects the value of milk going into manufactured products in this market. level of Class II pricing should provide for the orderly disposition of milk in excess of fluid needs and at the same time will return to producers a competitive use value for such milk. higher price for Class II milk than that herein proposed might result in a loss of outlets for local producer milk for manufacturing uses and hence, would not be in the interest of orderly marketing.

One handler proposed that provision be made for an adjustment to the Class II price during the flush production months which would provide a lower pricing for milk disposed of for butter and hard cheese. This handler also proposed that cream quotations be used to determine the Class II butterfat value without provision for a butter floor.

There are adequate facilities for handling the market surplus in the higher valued nonfluid milk products and hence no reason for encouraging the use of

producer milk for manufacture of butter and hard cheese. There is no indication that facilities are available in the market for the manufacture of hard cheese and, while butter-making facilities are available, it is apparent that they are not used to any extent.

Producers should have assurance under the order that they will receive returns commensurate with the use value of their milk. Cream prices may be temporarily depressed by local surplus conditions in the Philadelphia market. However, when such prices are below current butter quotations it is apparent that such butter quotations, which reflect the support levels established for butterfat, more nearly reflect the use value of butterfat. It is appropriate therefore to provide for use of the higher of the Philadelphia cream quotation or the New York butter quotation.

Butterfat differentials. The classification system hereinbefore set forth provides for a full accounting of all skim milk and butterfat. While milk is priced to handlers at the basic test it is intended that handlers costs for milk shall reflect the actual use value of skim milk and butterfat in each class. This can be accomplished by adjusting the class prices of each handler by appropriate butterfat differentials to the end that the per hundredweight costs of milk in each class for such handler reflects the actual test of milk used in such class.

The health regulations applicable in the marketing area permit the standardization of milk for consumer use and open market cream can be sold in a substantial part of the marketing area. Excess cream must be disposed of in the open market or utilized in manufactured products. Since butterfat differentials above competitive values would encourage handlers to utilize alternative sources of butterfat it is desirable that such differentials reflect as closely as possible competitive open market cream values.

The basic test at which milk has been sold to handlers and uniform prices paid to producers historically has been 3.5 percent in this market. Both producers and handlers proposed that the 3.5 percent basic test be maintained.

It is concluded that the Class I butterfat differential value should directly reflect the open market value of sweet cream for fluid uses as determined from current price quotations on the Philadelphia cream market. Such value may be derived by dividing by 334.8 the average of the weekly quotations for 40-quart cans of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the United States Department of Agriculture. Should the Class II butterfat differential exceed the value determined through this calculation, however, the Class II butterfat differential should be used as the Class I butterfat differential value.

The Class II butterfat differential should be directly related to the butterfat values in the Class II pricing formula. Such values reflect the competitive value of butterfat for manufacturing uses and will implement the orderly disposition of butterfat in excess of fluid needs.

Location differentials. Location differentials should be established for milk received at plants located a substantial distance from the market. Such differentials recognize the principle that milk similarly used and located should be similarly priced. Milk which originates nearest the market should command a higher price than milk more distantly located in order to reflect the difference in cost of transporting it to the marketing area. No advantage can be afforded any particular group of producers if the location differentials established realistically reflect only differences in transportation cost.

Several Baltimore City handlers operate plants at country points which are used for assembly of milk received from the farm. A total of five such country plants were associated with the market at the time of the hearing and four previously in existence had been closed. All the remaining plants almost wholly engage in can receiving operations where milk is received, weighed, sampled, cooled and moved in tankers to city bottling plants or to manufacturing outlets.

The continuing existence of these plants, located less than 35 miles from Baltimore City, is indicative of an unusual situation in the Baltimore market, complicated by the incomplete transition to bulk tank handling. The history of substantial location adjustments, which the cooperative has allowed Baltimore handlers for the operation of such country assembly stations, has no doubt encouraged handlers to continue operation of such stations at relatively short distances from the city and has deterred the development of adequate receiving plants.

The city bottling and distributing plant of one large handler, who operates four of the five country supply plants, is located in a redevelopment area. This handler testified that expansion of receiving and storage facilities at this time could not be considered pending a decision of the redevelopment authority on the continued operation of the plant in that-area. However, it appears that lack of receiving and storage facilities at city distributing plants is a problem of long standing and has only been intensified by the conversion from can to bulk handling and the corollary effect of the closing of several other country can receiving stations.

It is not the purpose of Federal orders to hasten or promote the process of conversion to bulk tank marketing methods. Conversely, it would be inappropriate to maintain or promote continuance of the existing can handling methods when technological advances and the current dynamic economic forces in effect in the market would naturally make such conversion desirable. Proponents supported the principle that milk similarly used and located should be similarly priced but pointed out the lack of adequate city receiving and storage facilities.

The lack of adequate city receiving and storage facilities is largely confined to the single handler previously discussed. Proponents recognized the inequities which would result if handlers operating distributing plants located in

the marketing area but outside of the city of Baltimore, from which milk is generally distributed in direct competition with Baltimore handlers, were permitted to purchase milk at a lesser cost than Baltimore City handlers. They proposed therefore that location differentials apply only to nondistributing receiving plants.

It is intended that the order shall establish uniform minimum prices for all handlers who are in competition for Class I sales in the marketing area. It would be inappropriate therefore to provide location differentials for distributing plants located in or near the marketing area. It would also be inappropriate to establish differentials within the radius from which milk should normally move directly from farms to bottling and distributing plants in the

In view of the geographical extent of the marketing area herein recommended it is desirable that an alternative basing point be established for purposes of applying location differentials. The City Hall in Baltimore, Maryland, and the Courthouse in Salisbury, Maryland, are appropriate points for this purpose. No differential should be established on Class I milk received at plants located within a 75-mile radius of either of these points. In the case of plants located more than 75 miles from the nearer of these points it is concluded that a differential on Class I milk of 12 cents per hundredweight plus 1.5 cents for each additional 10 miles or fraction thereof which such plants are located from such point, by shortest highway distance as determined by the market administrator, is appropriate. Such location differentials provide adequate allowance for transporting milk in bulk tankers between plants in this area.

Milk may be received at a fluid milk bottling plant directly from producers as well as from one or more receiving plants. Under such circumstances it is necessary to designate an assignment sequence which will protect producers from unnecessary transportation costs involving transfers for other than Class I uses. It is provided, therefore, that for purposes of computing allowable Class I location differentials for each handler, the Class I disposition from a fluid milk pasteurizing or bottling plant shall first be assigned to direct producer receipts at such plant and any remaining Class I use shall be assigned to receipts from other pool plants of the handler in the order of their nearness to the appropriate basing point.

The value of milk used in manufactured dairy products is affected little, if any, by the location of the plant receiving and processing such milk in contrast to the situation with respect to Class I milk. The milk received at country plants need not be transported to the city for utilization in Class II. Accordingly, a location differential should apply only to milk received at country plants and utilized in Class I or disposed of to plants which dispose of milk on routes in the marketing area.

The pricing provisions herein proposed utilize a number of reported prices and indexes from various specified

sources. From time to time it is possible that such individual price(s) or index may not be reported or published. Under such circumstances it is necessary to provide that the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the unreported or unpublished factor or price.

Payments on other source milk. As previously pointed out, the minimum class prices established under the order apply only on producer milk received at plants subject to full regulation under the order. However, milk may be disposed of for Class I utilization by and from plants not subject to full regulation of the order. Such unregulated plants may sell milk in bulk form to pool plants that in turn use it in supplying their Class I outlets, or they may sell Class I milk directly on routes as defined herein, including sale to government installations.

The role of the compulsory classification system and the minimum prices as set forth in a Federal milk order is toinsure that the price competition from reserve and excess milk will not break the market price for Class I milk, thereby destroying the incentive necessary to encourage adequate production. Because the classified program of the order is applicable only to fully regulated plants, it is necessary, in order to provide continued stability of the market, to remove any advantage unregulated plants may attain with respect to sales in the regulated market. Such plants have a real financial incentive to find a means to sell excess milk at prices somewhat less than current Class I levels so long as the price is higher than its value when used in manufactured dairy products. If unregulated plant operators were allowed to dispose of their surplus milk for Class I purposes in the regulated marketing area without some compensating or neutralizing provision of the order, it is clear that the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress as contemplated under the Agricultural Marketing Agreement Act of 1937, as amended, of returning minimum prices to the producers for the regulated marketing area, would be defeated.

In the absence of any competitive or regulatory force which compels all handlers to pay producers for milk used in fluid outlets at a rate commensurate with its value for such use, the position of any handler who pays the Class I price is insecure, if not untenable, whenever cheaper milk is available to the market. A classified pricing program under regulation cannot hope to be successful in the long run in insuring returns to producers at rates contemplated by the Act if it is possible for some handlers to purchase outside milk for Class I use at less than the Class I price. Any handler who finds himself in a situation where his competitors pay less for fluid milk than he pays will be compelled to resort to the same methods, if possible. A price advantage in using unreg-

ulated milk is a compelling force in promoting its greater use and as a result it is probable that regular sources of regulated milk will eventually be abandoned by handlers, thus creating insecurity for themselves, producers, and consumers alike.

It is concluded, therefore, that the inclusion of compensation payment provisions in the order is necessary to insure against the displacement of producer milk for the purpose of cost advantage. This is essential to preserve the integrity of the classified pricing program of the

Provision for partial through compensatory payments makes it possible for a handler operating outside the marketing area to use the facilities of fully regulated plants for disposing of surplus milk not needed for markets outside of the area without imposing the financial burden of such surplus on producers in the marketwide Compensatory payments pool. make it possible for a handler outside the marketing area to maintain small amounts of regular sales in the marketing area without subjecting his outside sales to full regulation.

Requiring such outside handler to be fully regulated would mean that he would be required to account to the pool at the full Class I price for all of the milk sold outside of the marketing area which is in competition with milk not subject to regulation under the order. Such a requirement for a dealer with little business within the marketing area could readily induce him to abandon his sales in the marketing area. Permitting a handler to continue to sell milk to customers in the marketing area without any form of price regulation would give such handler a competitive advantage as compared to the handler whose primary business is within the area and who consequently is fully regulated.

There are a number of local dealers. particularly in Pennsylvania, who now have regular direct distribution in the marketing area, some of whom maintain unregulated status under the terms of the order as herein proposed. In addition there are a number of substantial dealers in the immediately adjacent markets, many of whom could readily extend their distribution routes into the marketing area and by preserving their unregulated status could operate with a substantial price advantage over regulated handlers. In order to prevent such unregulated milk from having a price advantage a provision for compensatory payments is necessary.

The compensatory payments applicable to other source milk disposed of in the marketing area from distributing plants which do not acquire pool status should be the same as those applicable to other source milk distributed from pool plants. It would not be possible to stabilize this market under the classified pricing program in the market if nonpool plants were allowed to distribute unpriced milk in the marketing area without compensatory payments. Handlers distributing such unpriced milk in the marketing area have the same opportunity to buy milk at the opportunity

plants who purchase other source milk. In addition, however, the operator of a nonpool plant in all probability has surplus milk in his own plant which he would willingly dispose of on any basis that would yield a higher return than the surplus value. It would be particularly easy to dispose of such milk for Class I use in the marketing area by bidding for large contracts such as hospitals, defense establishments or other types of institutions. With surplus outlets as the alternative, and no compensatory payments to make, the nonpool handlers would have considerable incentive or margin to underbid the seller of priced milk for such sales. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk, therefore, is an essential and necessary provision of the order.

A proposal was made that a distributing handler disposing of only a small proportion of his total Class I sales in the marketing area be required only to pay to his producers the utilization value of milk according to the class prices established under the order. It was contended that such a provision would provide equality between the pool handler and the nonpool handler since their required class prices would be the same.

The difficulty with this proposal in this market is that partially regulated handlers would be procuring their milk from farmers located in the same general supply area as fully regulated handlers. The fully regulated handlers would be required to return to producers only the market uniform price. The partially regulated handlers, on the other hand, would be required to pay returns based on their own utilization of milk. This could result in a variation of returns to producers payable by regulated and partially regulated handlers. Such a variation would have an unstabilizing influence upon the marketing of milk within the general supply area for this market. It is, therefore, not feasible to adopt the plan in this market.

It is concluded that the compensatory payment on other source milk utilized in Class I and not classified and priced as Class I under any other Federal order, should be the difference between the Class II price and the Class I price under the order. The Class II price established by the order is a fair and economic measure of the value of milk in surplus uses in this area and hence, represents the actual value of other source milk.

By choosing a rate of compensatory payment which reflects the cost of the cheapest other source milk which may be expected to be available to regulated handlers, any advantage to one handler relative to others, in obtaining such cheap milk and substituting it for producer milk in Class I, is removed insofar as administratively possible and no handler is given the clear opportunity to gain an unfair advantage which would otherwise exist. Although the unfair advantage of obtaining other source milk is removed by the particular rate of payment herein provided, nevertheless, if other source milk is to be purchased, the incentive for purchasing the cheapest of cost level as do the operators of the pool such milk remains, because the lower the price which a handler pays for other source milk, the lower will be his total cost of purchasing such milk. In any event, a nonpool handler with Class I sales in the marketing area is provided with the opportunity to choose whether he shall offset such Class I sales with purchases from federally regulated plants classified and priced as Class I milk and, therefore, not subject to a compensatory or equalization payment.

All funds collected from compensatory payments should be added to the producer-settlement fund. The handler regulated by the order should be obligated to make compensatory payments to the producer-settlement fund. There will be no difference in actual price paid for milk whether the payment is made by the regulated handler or by the operator of the unregulated plant from which the other source milk was obtained. Because the regulated handler makes the actual distribution of the milk in the marketing area and because he reports its utilization to the market administrator he is, from the administrative viewpoint, the logical one to make the payment.

For the reasons set forth in this decision, Class I milk under the order is priced at the plant where the milk is first received from producers, hence, the compensatory payment on other source milk should be computed at the same stage of the marketing process to be directly comparable. No allowances are made in the order for cost and profits of handlers in moving producer milk to subsequent stages of marketing; neither should they be made for other source milk.

(d) Distribution of proceeds among producers.

1. Type of pool. The order should provide for the distribution of returns to producers through a marketwide equalization pool. Under this type of pooling all producers receive a uniform price which varies only to reflect differences in butterfat content and location of plant of receipt.

As has been previously indicated the principal cooperative association in the market carries the bulk of the necessary surplus of the market which it moves to nearby manufacturing plants. It is imperative, therefore, that a procedure for pooling be established which will provide for an equitable sharing by all producers of the lower returns realized from the handling of this necessary reserve supply of milk.

A marketwide pool will facilitate the activities of the cooperative in moving milk supplies among handlers to meet their individual needs and will-encourage processing of the necessary surplus of the market at the plants which can make the most efficient use of such milk.

(2) Producer-settlement fund. Payment of producers under the marketwide pooling arrangement will require a producer-settlement fund for making adjustments in payments, as among handlers, to the end that the total sums paid by each handler shall equal the value of milk received by him at the prices fixed in the proposed marketing agreement and order.

Under this pooling arrangement handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations will pay the difference to the producersettlement fund; all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of utilization will receive the difference from the producer-settlement fund. The market administrator in making payment to any handler from the producer-settlement fund should offset such payments by the amount of payments due from such handler. This is sound business practice. Without this provision the market administrator might be required to make payments to a handler who may have obtained money from the producer-settlement fund by filing incorrect reports or who owes money to the producer-settlement fund but who is financially unable to make full payment of all of his debts.

If at any time, the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. The handlers may then reduce payment to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund should be paid as soon as the balance in the fund is sufficient, and handlers should then complete payments to producers. In order to reduce the likelihood of this occurring, milk received by any handler who has not made the required payments into the producer-settlement fund for the preceding month should not be considered in the computation of the uniform price in the current month.

(3) Base and excess plan. The order should provide for the payment of producers under a base and excess plan as an adjunct to the seasonality of pricing hereinbefore provided to encourage a pattern of production throughout the year consistent with the fluid needs of the market. Producers should be paid only the Class II price for their excess milk. The price to be paid for base milk delivered should be determined by dividing the residual value of the pool after deducting the value for excess milk by the total hundredweight of base milk.

A "base-excess" plan was first established in the market in 1918 and has been in continuous effect, with modification, ever since except during World War II when milk was in extreme short supply in relation to the Class I needs of the market.

Under the plan herein recommended bases should be determined annually and would reflect each individual producer's average daily deliveries during the months of July through December. Bases would be effective for the subsequent months of March through June. Each producer would receive payment at the base price for all milk delivered during the March—June period which was not in excess of his established base. Milk delivered in such months in excess

of his established base would be paid for at the excess price.

The computation of a daily base for each producer would be made by the market administrator. The order provides that producers shall be notified of their established bases on or before the 20th day of February each year.

However, to insure that sufficient time is available for the computation of daily bases for the first base-paying period it is provided that producers shall be notified of their established daily bases on or before the first day of March 1960. The daily base of each producer would be determined by dividing his total deliveries of milk during the base-forming months by the number of days of delivery but not less than 154 days. For milk on every-other-day delivery each day of delivery would be considered for this purpose to be two days.

Since the recommended base-making period will have lapsed prior to the effective date of the order, some appropriate means must be provided for the computation of bases to be effective for the months of March through June 1960. The daily deliveries of producers, as determined from records of receipts at pool plants or by the cooperative association, in the case of those producer members whose milk was marketed for the account of an association, for the July-December 1959 period will provide an appropriate record for this purpose.

Proponents proposed that the basemaking period be the July-December period herein recommended and that the base-paying period be a full twelvemonth period beginning with February of each year and running through the following January. They also proposed that provision be made whereby a new producer entering the market after the base-making period would be given a base equal to a specified percentage of 'his deliveries during the month; such percentage to be varied by months. They further proposed that a producer with an established base be permitted to relinquish his established base, if he so desired, in favor of a new base to be determined in the same manner as proposed for new producers.

Such a plan is not necessary in this market. There has been no fixed seasonality of pricing in the market in recent years. In lieu of seasonal pricing the base-rating plan has been relied upon to even production over the year.

For reasons previously stated it is necessary and desirable to provide seasonality of pricing. This pricing, in conjunction with the base-rating plan herein proposed, will tend to maintain the desired pattern of production throughout the year. Further, because of the interrelationship of the production area of this market with those of adjacent Federal order markets, none of which employ a base-rating plan, a longer operating base period than that herein proposed might tend to unduly deter desirable shifts of plants and producers as between markets in response to changing supply-demand conditions.

Operation of the base-excess plan for paying producers requires certain rules in connection with the establishment and transfer of bases to provide reasonable administrative workability of the plan. In the case of a producer selling, leasing, or otherwise conveying his herd to another producer, and when it can be established to the satisfaction of the market administrator that such conveyance is bona fide and not for the purpose of evading any provision of this order, the base should be permitted to be transferred in its entirety with proper notice to the market administrator. It is also necessary for administrative reasons to provide the procedure for assignment of bases in cases of joint ownership and tenancy.

Since the base-excess plan herein proposed is to be effective in determining producer payments in only four months of the year, and all producers must establish a new base each year, provisions in addition to those contained herein for the establishment and tranfer of bases to meet unusual situations do not appear necessary.

Exception was taken to the Deputy Administrator's conclusion that no provision was needed to provide a base for a new producer entering the market. Bases are applicable only during the months of March through June which are the months of highest production and of least need for additional supplies. Any producer who does not establish a base during the months of July through December has not demonstrated an adequate association with the market to justify sharing in the Class I sales during the four flush production months when his milk would not be needed for Class I use.

(4) Payments to individual producers and cooperative associations. The order should provide that each handler pay each producer for milk received from such producer on or before the 15th day after the end of the month in which the milk was received. This is the customary date of payment to producers and it provides a reasonable time for the filing of reports, computation of and announcement of the uniform price and/or the base and excess prices for preparing individual checks for payment. The reporting, announcement and payment dates herein provided are synchronized to permit payment on the 15th day after the end of the month.

Minor modification of some of such dates previously recommended should be made to provide a more reasonable period of time for the announcement of prices, computation of the pool and better coordination in the dates for com-

pletion of certain payments.

The order should provide that, in the case of a cooperative association which is authorized to collect payments due its producer-members, and which requests such payments in writing, the handler make payment to the cooperative association of the amount otherwise due its producer-members. Under the provisions of the order as hereinafter proposed a cooperative association by definition has "full authority in the sale of milk of its members" and is engaged in "making collective sales of or marketing milk or its products for its members". As the duly authorized agent of its producermembers there can be no question of its authority to receive the payments otherwise due its members. This privilege is specifically provided in the Act and the practice is followed by cooperatives operating in the market.

In the case of milk which a cooperative association, in its capacity as a handler, disposes of to a proprietary handler the order should require that such handler pay the cooperative association not less than the minimum order price applicable at the location of the transferee plant. The Act clearly establishes the intent that no cooperative association may sell milk to any handler at less than the prescribed order class prices.

In order that the cooperative may have the proper records upon which to base payments to individual producer-members, the handler should, on or before the 11th day after the close of the month, be required to furnish the cooperative association with a statement showing the name, address and code number of each producer for whom payment is to be made to the association, the volume and butterfat content of milk, number of days on which delivery was made and the amount of and reason for any deduction made by the handler from the amount payable to each individual producer. The responsible handler should be permitted to make only proper deductions for goods and services furnished to, and for payments made on behalf of. the producer, and for which written authorization has been given by the producer.

Payments to a cooperative association, in lieu of payment to individual producers, should be made on or before the 14th day after the end of the month. This procedure will permit the cooperative association to prepare and mail individual checks to its producer-members by the same date as provided for payment to individual nonmember producers.

In the event a handler has received milk from producers which has an average butterfat content of more or less than 3.5 percent, the returns to such producers should be adjusted by a differential which reflects the weighted average values of the butterfat and skim milk in producer milk utilized in the respective classes. This follows the same principle as the payment of a uniform price to all producers.

Proponents proposed that, in the case of milk received from any producer with less than 3.5 percent butterfat content, the butterfat differential, otherwise applicable, be increased by one cent. They suggested that the use of this higher butterfat differential would encourage producers to deliver milk of not less than 3.5 percent butterfat content.

It is doubtful that the small variation in butterfat differential would achieve its intended purpose. Moreover, since each producer shares equally in the total value of the handlers' Class I and Class II utilization at the basic test of 3.5 percent butterfat, it is equally appropriate that each should receive the average utilization value of the butterfat and skim milk components for milk testing above or below 3.5 percent. The producer butterfat differential should be rounded to the nearest full cent in ac-

cordance with the general custom of the market.

In making payments to producers for milk received at plants located at least 75 miles from both Baltimore and Salisbury the uniform price and the price for base milk should be reduced 12 cents plus 1.5 cents for each additional 10 miles distance or fraction thereof which such plant is located from the nearer of such points. Such a location differential will reflect the cost of hauling milk to market by an efficient means and hence will distribute returns to producers in accordance with the location value of their milk.

No location differential should be applicable in making payment for excess milk. Excess milk is priced at the Class II price which reflects the value of milk for manufacturing uses in the production area. Producers should not be expected to be paid a lesser price for their milk than its value for manufacturing uses.

Administrative provisions. The marketing agreement and order should provide for other general administrative provisions which are common to all orders and which are necessary for proper and efficient administration of the order.

In addition to the definitions discussed earlier in this decision which define the scope of regulation, definition of certain other terms is necessary for brevity and to assure that each usage of such terms denotes the same meaning. These include the terms "Act", "Secretary", "Department", "Person", "Cooperative Association", "Route", and "Fluid Milk Product".

Provision should be made for the appointment by the Secretary of a market administrator, and the order should define his powers and duties, prescribe the information to be reported by handlers each month, set forth the rules to be followed by the market administrator in making computations required by the order, and provide for the liquidation of the order in the event of its suspension or termination.

The powers of the market administrator as set forth in the order are specifically provided in section 8c(7) (C) of the Agricultural Marketing Agreement Act of 1937, as amended, and the proposed language is essentially that of the statute.

The duties of the market administrator as set forth are essentially those which are found in all Federal milk marketing orders and are necessary to define specifically the responsibilities of the market administrator.

Handlers should be required to maintain adequate records of their operations and to make the reports necessary to establish classification of producer milk and payments due for such milk. Time limits must be prescribed for filing such reports and for making payments to producers. It should be provided that the market administrator report to each co-operative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the utilization of members'

milk in each handler's plant will be prorated to each class in the proportion that total receipts of producer milk were used in each class by such handler.

Handlers should maintain and make available to the market administrator all records and accounts of their operations and such facilities as are necessary to determine the accuracy of the information reported to the market administrator as he may deem necessary or any other information upon which the classification of producer milk or payments to producers depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled to verify all payments required under the order.

It is necessary that handlers maintain records to prove the utilization of the milk received from producers and that proper payments were made therefor. Since the books of all handlers associated with the market cannot be audited immediately after the milk has been delivered to a plant, it is necessary that such records be kept for a reasonable period of time.

The order should provide for specific limitations of the time that handlers should be required to retain their books and records and of the period of time in which obligations under the orders should terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation on July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F.R. 444). That decision covering the retention of records and limitations of claims is equally applicable in this situation and is adopted as a part of this decision.

Each handler should be required to pay the market adminstrator as his pro rata share of the cost of administering the order not more than 5 cents per hundredweight or such lesser amounts as the Secretary may, from time to time prescribe on (a) producer milk (including such handler's own production), (b) other source milk in pool plants which is allocated to Class I milk, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that such cost of administration shall be financed through an assessment on handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment to all producers' milk (including a handler's own production) and other source milk allocated to Class I

Plants not subject to the classification and pricing provisions of the order may distribute limited quantities of Class I milk in the marketing area. These plants must be checked to verify their status under the order. Assessment of administrative expense on such milk sold

in the marketing area will help defray the cost of such checking.

In view of the anticipated volumes of milk and the cost of administering orders in markets of comparable circumstances, it is concluded that an initial rate of 5 cents per hundredweight is necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 5 cents per hundredweight maximum without necessitating an amendment to the order. This should be done at any time experience in the market reveals that a lesser rate will produce sufficient revenue to administer the order properly.

A provision should be included in the order for furnishing market services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These should be provided by the market administrator and the cost should be borne by the producers receiving the service. If a cooperative association is performing such services for any member producers and is approved for such activities by the Secretary, the market administrator may accept this in lieu of his own service.

There is need for a marketing service program in connection with the administration of the order in this area. Orderly marketing will be promoted by assuring individual producers that they have obtained accurate weights and tests of their milk. To accomplish this fully, it is necessary that the butterfat test and weights of individual producer deliveries of milk as reported by the handler be verified for accuracy.

An additional phase of the marketing service program is to furnish producers with correct market information. Efficiency in the production, utilization and marketing of milk will be promoted by the dissemination of current information on a marketwide basis to all producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of 5 cents per hundredweight with respect to receipts of milk from producers for whom he renders marketing services. If later experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of several interested parties in the market. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent) that the suggested findings and conclusions set forth in the briefs are inconsistent with the findings and conclusions herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed/ marketing agreement and order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act:

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has

been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Upper Chesapeake Bay, Maryland, Marketing Area" and "Order Regulating the Handling of Milk in the Upper Chesapeake Bay, Maryland, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

Referendum order: determination of representative period: and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Upper Chesapeake Bay, Maryland, marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of August 1959 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision.

Issued at Washington, D.C., this 20th day of November 1959.

> CLARENCE L. MILLER, Assistant Secretary.

Order 1 Regulating the Handling of Milk. in the Upper Chesapeake Bay, Maryland, Marketing Area

Sec. 1027

Findings and determinations.

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AUTHORITY: §§ 1027.0 to 1027.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

## § 1027.0 Findings and determinations.

- (a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Upper Chesapeake Bay, Maryland, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:
- (1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the
- (2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest:
- (3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;
- (4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk and its products; and
- (5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata shareof such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (i) receipts of producer milk (including such handler's own farm production), (ii) receipts of nonfederally regulated other source milk at a pool plant allocated to Class I, and (iii) receipts of Class I milk at a nonpool plant for which a payment is due pursuant to § 1027.62(d).

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Chesapeake Bay, Maryland, marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

### DEFINITIONS

## § 1027.1 General definitions.

(a) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).
(b) "Department" means the United

States Department of Agriculture.

(c) "Upper Chesapeake Bay marketing area", hereinafter referred to as the "marketing area" means all territory situated within the corporate limits of the city of Baltimore, the town of Laurel in Prince Georges County; the counties of Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Harford, Howard, Kent, Queen Annes, Somerset, Talbot, Wicomico, Worcester and that portion of Calvert County lying north of a line beginning at the western terminus of Maryland State Highway 507, continuing easterly along said highway to its intersection with Maryland State Highway 2, continuing northerly along said Highway 2, to its intersection with Maryland State Highway 263 and then easterly along said Highway 263 to its terminus at the Chesapeake Bay, all in the State of Maryland, together with all waterfront facilities connected therewith and including all territory within such boundaries occupied by Government (Federal, State or municipal) installations, institutions or other similar establishments.
(d) "Route" means a delivery (in-

cluding any delivery by a vendor or disposition at a plant store or from a vending machine) of any Class I product to a wholesale or retail outlet, including a Federal, State or municipal establishment, but excluding any delivery to a plant.

## § 1027.2 Definitions of persons.

(a) "Person" means any individual, partnership, corporation, association, or other business unit.

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person who produces milk which is delivered in bulk (tank or cans) to a plant.

(d) "Dairy farmer for other markets" means:

(1) Any dairy farmer, whose milk is received at a pool plant during any month of September through February but whose milk is diverted to a nonpool plant during the month on more than the number of days specified in paragraph (e) (1) of this section, and

(2) Except for the months of March through August 1960, any dairy farmer whose milk is received at a pool plant during the months of March through August from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received milk other than as producer milk during any of the preceding months of September through-February.

<sup>&</sup>lt;sup>2</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, governing proceedings to formulate marketing agreements and marketing orders have been met.

- (e) "Producer" means any dairy farmer, except a producer-handler or a dairy farmer for other markets, who produces milk which is received at a pool plant or is diverted to a nonpool plant during any month(s) of March through August or on not more than 8 days (4 days in the case of every-other-day delivery) during any month(s) of September through February: Provided. That the milk so diverted shall be deemed to have been received by the diverting-handler at a pool plant at the location from which it was diverted.
- (f) "Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the associa-
- (1) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(2) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

- (g) "Handler" means any person (1) in his capacity as the operator of a pool plant; (2) in his capacity as the operator of a nonpool plant from which (i) Class I milk is disposed of on routes in the marketing area; or (ii) milk is shipped to a pool plant qualified pursuant to § 1027.3(b) (1); and (3) a cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of paragraph (e) of this section from a pool plant for the account of such cooperative association.
  (h) "Pool handler" means any person
- in his capacity as the operator of a pool plant or a cooperative association qualified as a handler pursuant to paragraph (g)(3) of this section.
- (i) "Producer-handler" means any person who operates a dairy farm and a plant from which Class I milk is disposed of on route(s) in the marketing area and who during the month received no milk from any source other than his own farm production and from pool plants: Provided, That the maintenance, care and management of the herd and other resources necessary to production, processing, packaging and distribution of the milk are the personal enterprise and personal risk of such person.

## § 1027.3 Definitions of plants.

- (a) "Plant" means the land, buildings. surroundings, facilities and equipment operated by one or more persons, constituting a single operating unit or establishment for the receiving (other than transfer from one vehicle to another), processing or packaging of milk or milk products.
- (b) "Pool plant" means a plant specified in subparagraph (1), (2) or (3) of this paragraph other than that of a producer-handler: Provided, That any plant qualified as a pool plant pursuant to subparagraph (2) of this paragraph in each of the months of September through February shall be a pool plant for the immediately following months of March through August unless the handler gives

written notice to the market administrator on or before the first day of any such month(s) that the plant is a nonpool plant for the remaining months through August: And provided further, That any such plant specified in subparagraph (2) of this paragraph which was a nonpool plant during any month of September through February shall not be a pool plant in any of the immediately following months of March through August in which it is operated by the same handler, an affiliate of the handler or by any person who controls or is controlled by the handler: And provided also, That notwithstanding the preceding proviso, any plant which furnishes proof to the market administrator that it met the 50 percent shipping requirement during each of the months of September 1959 to February 1960 inclusive, shall retain automatically its pool plant status during the period March through August 1960 unless the operator of such plant notifies the market administrator that such status should be terminated.

- (1) A plant which during the month disposes of not less than 10 percent of its total receipts of milk directly from dairy farms on routes as Class I milk in the marketing area and not less than 50 percent of such receipts as Class I milk both inside and outside the marketing area.
- (2) A plant in any month of September through February in which not less than 50 percent, and in any month of March through August in which not less than 40 percent, of its receipts of milk from dairy farmers, is moved to a plant which disposes of not less than 10 percent of its receipts from dairy farms and from other plants on routes as Class I milk in the marketing area and not less than 50 percent of such receipts as Class I milk both inside and outside the marketing area: Provided, That in the case of a handler operating a pool plant qualified pursuant to subparagraph (1) of this paragraph and two or more plants approved by the appropriate health authority in the marketing area as a source of supply for such plant, such supply plants shall be considered as a unit (system) for purposes of plant qualification under this paragraph upon written notice to the market administrator by the handler designating the plants to be included and the period during which such designation shall apply. Such notice or notice of changes in designation shall be given on or before the first day of the first month to which such notice
- (3) A manufacturing plant, located in the marketing area, from which any fluid milk product is moved to a plant which is a pool plant pursuant to subparagraph (1) of this paragraph if during the month not less than 90 percent of its receipts from dairy farmers are from Baltimore City permit holders who are members of a cooperative association of which 70 percent or more of the members are producers whose milk is received at other pool plants.
- (c) "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

### § 1027.4 Definitions of milk and milk products.

(a) "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), concentrated milk, and (except eggnog, milk shake mix, ice cream mix, evaporated and plain or sweetened condensed milk or skim milk and sterilized products in hermetically sealed containers) any mixture in fluid form of cream and milk or skim milk containing less than 12 percent butterfat and 50 percent of the quantity by weight of any such mixture containing at least 12 percent but less than 18 percent butterfat.

(b) "Producer milk" means all skim milk or butterfat contained in milk received at a pool plant directly from producers, or diverted in accordance with the provisions of § 1027.2(e).

(c) "Other source milk" means all skim milk and butterfat contained in or represented by (1) receipts (including any Class II milk product produced in the handler's plant during a prior month) in a form other than as fluid milk products which are reprocessed, converted or combined with another product during the month, and (2) receipts from any source in the form of fluid milk products other than as producer milk or from pool

plants and opening inventory.

(d) "Base milk" means milk received at a pool plant from a producer during any of the months of March through June which is not in excess of such producer's daily base computed pursuant to § 1027.63 multiplied by the number of days in such month on which such producer's milk was received at such pool plant: Provided. That with respect to any producer on every-other-day delivery, the days of nondelivery shall be considered as days of delivery for purpose of this paragraph and of § 1027.63.

(e) "Excess milk" means milk received at a pool plant from a producer during any of the months of March through June which is in excess of base milk received from such producer during such

### MARKET ADMINISTRATOR

### § 1027.20 Designation.

The agency for the administration of this part shall be a "market administrator" selected by the Secretary. He shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

## § 1027.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To make rules and regulations to effectuate its terms and provisions;
- (c) To receive, investigate, and report to the Secretary complaints of violations; and
- (d) To recommend amendments to the Secretary.

## § 1027.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and

provisions:

- (c) Obtain a bond in a reasonable amount and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator:
- (d) Pay out of the funds received pursuant to § 1027.88,
- (1) The cost of his bond and the bonds of his employees.

(2) His own compensation, and

- (3) All other expenses, except those incurred under § 1027.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary surrender the same to such other person as the Secretary may designate:
- (f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person, who after the date upon which he is required to perform such acts, has not made reports pursuant to § 1027.30 or payments pursuant to §§ 1027.80 through 1027.88;

(g) Submit his books and records to examination by the Secretary, and furnish such information and reports as the

Secretary may request:

- (h) Verify all reports and payments of each handler, by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends;
- (i) Prepare and make available for the benefit of producers, consumers, and handlers, such general statistics and information concerning the operation of this part as do not reveal confidential information:
- (j) On or before the date specified. publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:
- (1) The 5th day of each month, the Class I price computed pursuant to § 1027.50(a) for the current month, and the Class II price computed pursuant to § 1027.50(b) and the handler butterfat differentials computed pursuant to § 1027.51, both for the preceding month; and
- (2) The 11th day of each month, the uniform price computed pursuant to § 1027.71, or the base and excess prices

computed pursuant to § 1027.72 and the producer butterfat differential computed pursuant to § 1027.81, all for the preceding month; and

- (k). On or before the 11th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month.
- (1) On or before March 1, 1960, and on or before February 20th of each year thereafter notify:
- (1) Each cooperative association of the daily base established by each producer member of such association:
- (2) Each nonmember producer of the daily base established by such producer.

REPORTS, RECORDS AND FACILITIES

### § 1027.30 Reports of receipts and utilization.

- (a) On or before the 7th day after the end of each month, or not later than the 8th day after the end of the month if the report required by this paragraph is delivered in person to the office of the market administrator, each cooperative association in its capacity as a handler and each handler with respect to each of his pool plants shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator as follows:
- (1) The quantities of skim milk and butterfat contained in, (i) receipts of producer milk (including such handler's own production), (ii) receipts of fluid milk products from other pool plants and (iii) receipts of other source milk;
- (2) Inventories of fluid milk products on hand at the beginning and end of the month; and
- (3) The utilization of all skim milk .and butterfat required to be reported pursuant to this paragraph.
- (b) Each handler operating a nonpool plant from which fluid milk products are disposed of on routes as Class I milk in the marketing area shall, unless otherwise directed by the market administrator, report for such plant at the same time and in the same manner prescribed for a pool handler in paragraph (a) of this section.
- (c) Except as provided in paragraph (b) of this section each nonpool handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

## § 1027.31 Other reports.

- (a) Each pool handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:
- (1) On or before the 20th day after the end of the month, for each of his pool plants, his producer payroll for such month, which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from market administrator shall be retained

such producer, (iii) the average butterfat content of such milk, and (iv) the net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) On or before the first day other source milk is received at his pool plant(s) in the form of any fluid milk product; his intention to receive such product and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) Such other information with respect to receipts and utilization of butterfat and skim milk as the market ad-

ministrator shall.prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant location involved.

(c) Each pool handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to § 1027.80(b) shall on or before the 11th day after the end of each month report to such cooperative association concerning each producer-member of such cooperative association from whom he received milk during the month as follows:

(1) The name, address and code num-

ber, if any;

(2) The total deliveries and the number of days on which delivery was made: (3) The average butterfat test of the

milk delivered; and

(4) The nature and amount of any deductions to be made in payments due such producer.

(d) Each pool handler dumping skim milk pursuant to § 1027.41(b)(3) shall give the market administrator during normal duty hours, not less than three hours advance notice of intention to make such disposition and of the quantities of skim milk involved.

## § 1027.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim and butterfat handled in any form:

(b) The weights and tests for butterfat and other content of all milk and milk products handled:

- (c) The pounds of skim milk and butterfat contained in or represented by all items in inventory at the beginning and end of each month required to be reported pursuant to § 1027.30(a)(2); and
- (d) Payments to producers and cooperative associations, including any deductions, and the disbursement of money so deducted.

## § 1027.33 Retention of records.

All books and records required under this part to be made available to the

by the handler for a period of three years to begin at the end of the month to which such books and records pertain: Provided, That if within such threeyear period, the market administrator notifies the handler in writing that the retention of such books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

#### CLASSIFICATION OF MILK

#### § 1027.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at pool plants and which are required to be reported pursuant to § 1027.30 shall be classified by the market administrator in accordance with the provisions of §§ 1027.41 through 1027.46.

### § 1027.41 Classes of utilization.

Subject to the conditions set forth in §§ 1027.42 to 1027.46 the classes of utilization shall be as follows:

- (a) Class I milk. Class I milk shall be all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat:
- (1) Disposed of in the form of fluid milk products except as provided in paragraph (b) (2) and (3) of this section, and
- (2) Not specifically accounted for as Class II milk.
- (b) Class II milk. Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those designated as Class I milk pursuant to paragraph (a) (1) of this section; (2) disposed of for livestock feed; (3) contained in the skim dumped if the conditions of § 1027.31(d) are met by the handler; (4) contained in inventory of fluid milk products on hand at the end of the month; (5) in actual plant shrinkage not to exceed two percent of skim milk and butterfat, respectively, in producer milk; and (6) in shrinkage of other source milk.

## § 1027.42 Shrinkage.

The market administrator shall allocate shrinkage of each pool plant as follows:

- (a) Compute the total shrinkage of skim milk and butterfat, respectively; and
- (b) Allocate the resulting amounts pro rata to skim milk and butterfat, respectively, in receipts of producer milk and other source milk.

### § 1027.43 Responsibility of handlers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that

such skim milk or butterfat should be classified otherwise; and

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

### § 1027.44 Transfers.

Skim milk or butterfat disposed of during the month from a pool plant shall be classified:

- (a) As Class I milk if transferred in the form of any fluid milk product to the pool plant of another handler unless utilization as Class II milk is claimed in the reports submitted for both pool plants for the month to the market administrator pursuant to § 1027.30(a): Provided. That the skim milk or butterfat so classified as Class II milk shall be limited to the amount thereof remaining in Class II milk in the transferee plant after the allocation of other source milk pursuant to § 1027.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: And provided further, That if either or both pool plants have receipts of other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk at both plants.
- (b) As Class I milk if transferred or diverted in the form of any fluid milk product to a producer-handler.

(c) As Class I milk if transferred in packaged form to a nonpool plant in the form of any fluid milk product.

(d) As Class I milk if transferred or diverted in bulk in the form of any fluid milk product to a nonpool plant, (other than the plant of a producerhandler) to the extent of the disposition of skim milk and butterfat, respectively, from such plant on routes as Class I milk in the marketing area: Provided, That any remaining amount of such transfer or diversion shall be allocated to the highest utilization remaining in the transferee plant after the prior assignment of receipts at such plant from dairy farmers who the market administrator determines constitute its regular source of supply.

(e) Except as provided in paragraph (d) of this section as Class I milk if transferred or diverted in bulk in the form of any fluid milk product to a nonpool plant, located less than 300 miles from the City Hall in Baltimore, Maryland, unless (1) the handler claims Class II utilization in his report submitted pursuant to § 1027.30(a); (2) the operator of the transferee plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and (3) an equivalent Class II utilization was available in such plant after the assignment of receipts at such plant from other Federal order plants in the class to which assigned under such other order(s): Provided, That if upon inspection of the records of such plant it is found that an equivalent utilization of skim milk and butterfat was not available the remaining pounds shall be classified as

(f) As Class I milk if transferred or diverted in bulk in the form of any fluid milk products to a nonpool plant located more than 300 miles from the City Hall in Baltimore, Maryland.

## § 1027.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization submitted pursuant to § 1027.30(a) for each pool plant of each handler and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk for such handlers: Provided, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

### § 1027.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1027.45, the market administrator shall determine the classification of producer milk received at each pool plant as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk in producer milk classified pursuant to  $\S 10\overline{27.41}(b)(5)$ ;

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received during the month in a form other than fluid milk products;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of any fluid milk product from plants which are not fully subject to the pricing provisions of another order issued pursuant to the Act;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk in bulk receipts in the form of any fluid milk product from plants which are fully subject to the pricing provisions of another order issued pursuant to the Act;

(5) Subtract from the pounds of skim milk remaining in Class II milk, in excess of the pounds of skim milk in inventory of fluid milk products on hand at the end of the month, the pounds of skim milk in inventory of such products on hand at the beginning of the month: Provided, That if the pounds of skim milk in such beginning inventory is greater than the remaining Class II milk utilization the difference shall be subtracted from the pounds of skim milk remaining in Class I milk:

(6) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in packaged fluid milk products received from fully regulated plants under the provisions of another order issued pursuant to the Act; (7) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received from the pool plants of other handlers in the form of fluid milk products according to the classification determined pursuant to § 1027.44(a);

(8) Add to the remaining pounds of skim milk in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

- (9) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in each class in series beginning with Class II milk. Any amount so subtracted shall be known as "overage";
- (b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section; and
- (c) Add the pounds of skim milk and the pounds of butterfat allocated to producer milk in each class computed pursuant to paragraphs (a) and (b) of this section and determine the weighted average butterfat content of each class.

#### MINIMUM PRICES

## § 1027.50 Class prices.

Subject to the provisions of §§ 1027.51 and 1027.52 each handler shall pay, at the time and in the manner set forth in § 1027.80 for each hundredweight of milk containing 3.5 percent butterfat received at his pool plant(s) during the month from producers or a cooperative association not less than the following prices per hundredweight for the respective quantities of milk in each class computed pursuant to § 1027.46.

(a) Class I price. During the first 18 months from the effective date of this part the price for Class I milk shall be \$5.55 for the months of July through February and \$5.10 for the months of March through June: Provided, That such price in any month shall be adjusted to reflect the deviation of the average of the Federal order Class I prices for the Philadelphia, New York and Chicago markets for such month from such average price in the corresponding month of 1958, as follows:

Three-market average deviation from corresponding month of 1958 (cents),	Class I price adjustment (cents)
plus or minus:	plus or minus
0-15	
15.1-35	
35.1-55	
55.1-75	60
75.1–95	08

- (b) Class II price. The price for Class II milk shall be the sum of the values of butterfat and skim milk computed as follows:
- (1) Butterfat. Add all weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the Department, divide by the number of quotations, subtract \$2.00, divide by 33.48, multiply by 3.5: Provided, That such butterfat value shall not be less than 3.5 times 120 percent of the

average Grade A (92-score) butter price at New York as reported by the Department for the month for which payment is to be made less 17 cents;

(2) Skim milk. The average of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as reported for the period from the 26th day of the preceding month through the 25th day of the current month by the Department shall determine the skim values as follows:

#### Average price per pound of nonfat dry milk (spray and roller process) Skim value \$0.0065 or below\_\_\_\_\_ \$0.066-\$0.075\_\_\_\_\_ .... \$0, 075 \$0.076-\$0.085 \$0.086-\$0.095 .150 \_225 \$0.096-\$0.105\_\_\_\_\_ .300 \$0.106-\$0.115\_\_\_\_\_ .450 \$0.116-\$0.125----\$0.126-\$0.135\_\_\_\_\_ \$0.136-\$0.145\_\_\_\_\_ . 525 **.** 600 \$0.146-\$0.155\_\_\_\_\_ . 675 \$0.156-\$0.165\_\_\_\_\_ \$0.166-\$0.175\_\_\_\_\_ .825 \$0.176-\$0.185\_\_\_\_\_ . 900 \$0.186-\$0.195\_\_\_\_\_ -975

# § 1027.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 1027.50 shall be increased or decreased, respectively, for each one-tenth of one percent butterfat content variation from 3.5 percent, by the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) Class I milk. Add all weekly quotations per 40-quart can of 40 percent fresh sweet cream, approved for Pennsylvania and New Jersey, in the Philadelphia market as reported each week ending within the month by the Department, divide by the number of quotations and divide the resulting amount by 334.8: Provided, That if the result is less than the Class II differential determined pursuant to paragraph (b) in this section, such Class II differential shall also be applicable to Class I milk; and

(b) Class II milk. Divide by 35 the butterfat value determined pursuant to § 1027.50(b) (1).

# § 1027.52 Location differentials to handlers.

For that milk received from producers at a pool plant located 75 miles or more from the nearer of the City Hall in Baltimore or the Courthouse in Salisbury, Maryland, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I milk, the price specified in § 1027.50(a) shall be reduced 12 cents per hundredweight plus an additional 1.5 cents for each additional 10 miles or fraction thereof in excess of 75 miles: Provided, That for the purpose of calculating such location differential, products designated as Class I milk which are transferred between pool plants shall be assigned first to any remainder of Class II milk in the transferee plant after making the allocations prescribed in § 1027.46(a) (1) through (5) and the corresponding steps in § 102746(b) for such plant, such assignment to the transferor plant to be made in sequence beginning with the plant where the largest location differential is applicable.

# § 1027.53 Use of equivalent price or index.

If for any reason a price quotation or index required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price or index which is required.

### APPLICATION OF PROVISIONS

## § 1027.60 Producer-handler.

Sections 1027.40 through 1027.46, 1027.50 through 1027.52, 1027.62 through 1027.64, 1027.70 through 1027.72, 1027.80 through 1027.89 shall not apply to a producer-handler.

# § 1027.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered as a nonpool plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 1027.3(b) (1) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless a greater volume of Class I milk is disposed of from such plant on routes in this marketing area than in a marketing area pursuant to such other order.—

(b) Any plant qualified pursuant to \$1027.3(b) (2) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the first proviso in \$1027.3(b) for each month during the preceding September through February.

# § 1027:62 Payments on other source milk.

On or before the 13th day after the end of each month, handlers shall make payments to producers through the producer-settlement fund as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (2) and (b) shall make payment on the quantity so allocated at the difference between the Class II price and the Class I price applicable at the location of his pool plant qualified pursuant to § 1027.3 (b) (1).

(b) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (3) and (b) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at the location of the nearest nonpool plant(s) (as determined by the application of the location differential

rate pursuant to § 1027.52) from which an equivalent amount of such other source milk was received.

(c) Each pool handler who received other source milk which is allocated to Class I pursuant to \$1027.46 (a) (4) or (6) and (b), which milk was not classified and priced as Class I milk under such other Federal order, shall make payment on the quantity of such milk at the difference between the Class I price and the Class II price applicable at the location of the nearest other Federal order plant(s) (as determined by the application of the location differential rate presented in \$1027.52) from which an equivalent amount of such other source milk was received.

(d) Each handler operating a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the Act, and from which Class I milk is disposed of on routes in the marketing area during the month, shall make payment on the quantity of skim milk and butterfat so disposed of which is in excess of his receipts of skim milk and butterfat, respectively, classified and priced as Class I milk under this or any other Federal order at the difference between the Class I price and the Class II price applicable at the location of such plant.

(e) Each handler operating a nonpool plant which is subject to the classification and pricing provisions of another order issued pursuant to the Act, and from which Class I milk is disposed of on routes in the marketing area during the month shall make payment on any quantity of skim milk and butterfat so disposed of which was not classified and priced as Class I under such other order, at the difference between the Class I and Class II price applicable at the location of such plant.

# § 1027.63 Computation of base for each producer.

For each of the months of March through June of each year the market administrator shall compute a base for each producer as follows, subject to the rules set forth in § 1027.64:

(a) Divide the total pounds of milk received by a pool handler(s) from such producer during the months of July through December immediately preceding by the number of days of such producer's delivery in such period, but not less than 154 days: Provided. That for purposes of determining bases to be effective during the March-June period 1960, records of receipts at plants and records of the cooperative associations satisfactory to the market administrator, shall be used for the period July 1 through December 1959: And provided further, That in the case of a producer on everyother-day delivery, the days of nondelivery shall be considered days of delivery for purposes of this section.

## § 1027.64 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to \$ 1027.63 may be transferred in its entirety upon written notice to the market administrator on or before the last day of the month of transfer, but only if a

producer sells, leases or otherwise conveys his herd to another producer and it is established to the satisfaction of the market administrator that the conveyance of the herd was bona fide and not for the purpose of evading any provision of this part;

(b) If a producer operates more than one farm, each delivering milk to a pool plant, he shall establish a separate base with respect to producer milk delivered from each such farm.

(c) Only one base shall be allotted with respect to milk produced by one or more persons where the herd, land, buildings, and equipment used are jointly owned or operated: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of an application signed by all joint holders or their heirs, or assigns;

# § 1027.70 Computation of the value of producer milk for each handler.

For each month, the market administrator shall compute the value of producer milk for each pool handler as follows:

(a) Multiply the pounds of producer milk in each class computed pursuant to § 1027.46 by the applicable class price and total the resulting amounts.

(b) Add the amount of any payments due from such handler pursuant to § 1027.62 (a), (b) and (c).

(c) Add the amounts computed by multiplying the pounds of "overage" deducted from each class pursuant to \$ 1027.46 (a) (9) and (b) by the applicable class price.

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month less allowable shrinkage allocated pursuant to § 1027.46 (a) (1) and (b) in such month, or the hundredweight of milk subtracted from Class I pursuant to § 1027.46 (a) (5) and (b) for the current month, whichever is less;

(e) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of milk allocated to Class I pursuant to § 1027.46 (a) (5) and (b) for the current month which is in excess of (1) the hundredweight of milk for which an adjustment was made pursuant to paragraph (d); and (2) the hundredweight of milk assigned to Class II pursuant to § 1027.46 (a) (4) and (b) for the previous month and which was classified and priced as Class I under the other Federal order; and

(f) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

# $\S$ 1027.71 Computation of the uniform price.

For each of the months of July through February, the market administrator

shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content, f.o.b. market as follows:

(a) Combine into one total the net obligations computed pursuant to § 1027.70 for all handlers who made reports prescribed in § 1027.30(a) for the month who were not in default of payments pursuant to § 1027.84 for the preceding month;

(b) Subtract, if the weighted average butterfat content of producer milk in paragraph (a) is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the producer butterfat differential computed pursuant to § 1027.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 1027.82:

(d) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund:

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) in this section; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section.

# § 1027.72 Price for base milk and excess milk.

For each of the months of March through June the price for base milk and excess milk of 3.5 percent butterfat content, f.o.b. market, shall be as follows:

(a) The price for excess milk shall be the Class II price computed pursuant to § 1027.50(b); and

(b) The price for base milk shall be the price computed by the market administrator as follows:

(1) Make the same computations as required pursuant to § 1027.71(a) through (d);

(2) Subtract from the resulting value an amount computed by multiplying the total hundredweight of excess milk by the excess price pursuant to paragraph (a) in this section;

(3) Divide the value obtained pursuant to subparagraph (2) in this paragraph by the total hundredweight of base milk; and

(4) Subtract from the resulting amount not less than 4 cents nor more than 5 cents.

### PAYMENTS

## § 1027.80 Time and method of payment.

(a) Except as provided in paragraph (b) of this section each pool handler on or before the 15th day after the end of each month shall make payment to each producer for milk which was received from such producer during the month at not less than the uniform price computed pursuant to § 1027.71 for the months of July through February and at not less than the price for base milk computed pursuant to § 1027.72(b) with respect to

base milk received from such producer. and not less than the excess price determined pursuant to § 1027.72(a) for excess milk received from such producer for the months of March through June subject to the following adjustments: (1) The butterfat differential computed pursuant to § 1027.81, (2) less the location differential computed pursuant to § 1027.82, and (3) less proper deductions authorized in writing by such producer: Provided, That if by such date such handler has not received full payment from the market administrator pursuant to § 1027.85 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator:

(b) In the case of a cooperative association which the market administrator determines is authorized by its producermembers to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) In the case of milk received by a handler from a cooperative association in its capacity as a handler such handler shall on or before the day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

# § 1027.81 Producer butterfat differ-

In making payments pursuant to § 1027.80 (a) or (b), the uniform prices and the price for base and for excess milk shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 1027.51 (a) and (b) weighted by the pounds of butterfat in producer milk in each class and rounded to the nearest full cent.

# § 1027.82 Location differential to producers.

In making payments to producers or to a cooperative association pursuant to \$1027.80(a) and in making payment for base milk pursuant to \$1027.80(b) a handler shall deduct with respect to all such milk received at pcol plants located 75 miles by shortest highway distance from the nearer of the City Hall, Baltimore, Maryland, or the Courthouse, Salisbury, Maryland, as determined by the market administrator, 12 cents per hundredweight plus 1.5 cents for each

additional 10-mile distance, or fraction thereof, which such plant is located from such point.

### § 1027.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1027.62, 1027.84 and 1027.86 and out of which he shall make all payments pursuant to §§ 1027.85 and 1027.86; Provided, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

### § 1027.84 Payments to the producersettlement fund.

On or before the 13th day after the end of each month, each handler, including a cooperative association which is a handler, shall pay to the market administrator for payment to producers through the producer-settlement fund the amount by which the net pool obligation of such handler is greater than the sum required to be paid producers by such handler pursuant to § 1027.80 (a) and (b).

## § 1027.85 Payments out of the producersettlement fund.

On or before the 13th day after the end of the month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid producers by such handler pursuant to \$1027.80 (a) and (b) is greater than the net pool obligations of such handler: Provided, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

## § 1027.86 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

## § 1027.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers for milk (other than milk of his own production) pursuant to § 1027.80(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 18th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers

who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 1027.80(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

## § 1027.88 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler, including any cooperative association which is a handler, shall pay to the market administrator on or before the 18th day after the end of the month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe for each hundredweight of skim milk and butterfat contained in (a) producer milk (including such handler's own farm production), (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1027.46(a) (2), (3) and (b), or (c) Class I milk for which a payment is due pursuant to § 1027.62(d).

## § 1027.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part

for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (a) and (c), terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin until the first day of the month following the month

during which all such books and records pertaining to such obligations are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years' after the end of the month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time files, pursuant to section 8c(15) (A) of the Act. a petition claiming such money.

# Effective Time, Suspension, or Termination

### § 1027.90 Effective time.

The provisions of this part, or any amendment to this part, shall become

effective at such time as the Secretary' may declare and shall continue in force until suspended or terminated, pursuant to § 1027.91.

## § 1027.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part, whenever he finds that this part or any provision of this part, obstructs, or does not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

### § 1027.92 Continuing obligations.

If under the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

### § 1027.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and

execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If the liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

#### MISCELLANEOUS PROVISIONS

## § 1027.100 Agents.

The Secretary may by designation in writing name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

## § 1027.101 Separability of provisions.

If any provision of this part, or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

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